

South Carolina General Assembly
118th Session, 2009-2010

A146, R159, H3442

STATUS INFORMATION

General Bill

Sponsors: Reps. Bingham, Harrell, Duncan, Harrison, Owens, Toole, Merrill, Brady, E.H. Pitts, G.M. Smith, Daning, Haley, Huggins, Cato, Ballentine, D.C. Smith, J.R. Smith, Rice, T.R. Young, Horne, Wylie, Bedingfield, Clemmons, Bales, Lucas, Neilson, Long, J.M. Neal and M.A. Pitts

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Introduced in the House on February 4, 2009

Introduced in the Senate on February 23, 2010

Last Amended on March 25, 2010

Passed by the General Assembly on March 25, 2010

Governor's Action: March 30, 2010, Signed

Summary: Department of Workforce

HISTORY OF LEGISLATIVE ACTIONS

Date	Body	Action Description with journal page number
2/4/2009	House	Introduced and read first time HJ -14
2/4/2009	House	Referred to Committee on Judiciary HJ -16
2/5/2009	House	Member(s) request name added as sponsor: Rice
2/10/2009	House	Member(s) request name added as sponsor: T.R.Young
2/17/2009	House	Member(s) request name added as sponsor: Horne
3/4/2009	House	Committee report: Favorable with amendment Judiciary HJ -62
3/5/2009	House	Member(s) request name added as sponsor: Wylie
3/24/2009	House	Requests for debate-Rep(s). Bingham, Sandifer, Harrison, Ott, Delleney, Jefferson, JE Smith, Vick, Hosey, Kennedy, Weeks, Lowe, Crawford, Daning, JH Neal, and Sellers HJ -35
3/26/2009	House	Debate adjourned until Tuesday, March 31, 2009 HJ -30
3/31/2009	House	Member(s) request name added as sponsor: Bedingfield
3/31/2009	House	Recommitted to Committee on Judiciary HJ -73
3/31/2009	House	Roll call Yeas-61 Nays-49 HJ -83
4/1/2009	House	Reconsidered HJ -86
4/1/2009	House	Roll call Yeas-59 Nays-50 HJ -91
4/1/2009	House	Debate adjourned until Tuesday, April 7, 2009 HJ -91
4/22/2009	House	Debate adjourned HJ -74
4/29/2009	House	Recommitted to Committee on Judiciary HJ -216
2/3/2010	House	Recalled from Committee on Judiciary HJ -13
2/17/2010	House	Member(s) request name added as sponsor: Clemmons, Bales, Lucas, Neilson, Long, J.M.Neal, M.A.Pitts
2/17/2010	House	Amended HJ -34
2/17/2010	House	Read second time HJ -186
2/17/2010	House	Roll call Yeas-108 Nays-1 HJ -186
2/18/2010	House	Read third time and sent to Senate HJ -43
2/23/2010	Senate	Introduced and read first time SJ -10
2/23/2010	Senate	Referred to Committee on Labor, Commerce and Industry SJ -10
2/24/2010	Senate	Recalled from Committee on Labor, Commerce and Industry

2/24/2010	Senate	Read second time
2/25/2010	Senate	Amended SJ-70
2/25/2010	Senate	Read third time and returned to House with amendments SJ-70
3/3/2010	House	Debate adjourned until Tuesday, March 9, 2010 HJ-25
3/9/2010	House	Debate adjourned until Wednesday, March 10, 2010 HJ-28
3/10/2010	House	Debate adjourned HJ-25
3/10/2010	House	Senate amendment amended HJ-77
3/10/2010	House	Returned to Senate with amendments HJ-77
3/16/2010	Senate	Non-concurrence in House amendment SJ-39
3/23/2010	House	House insists upon amendment and conference committee appointed Reps. Bingham, Sandifer and Battle HJ-21
3/24/2010	Senate	Conference committee appointed Setzler, Rankin, and Ryberg SJ-17
3/25/2010	House	Conference report received and adopted HJ-58
3/25/2010	Senate	Conference report adopted SJ-169
3/25/2010	Senate	Ordered enrolled for ratification SJ-256
3/25/2010		Ratified R 159
3/30/2010		Signed By Governor
4/12/2010		Scrivener's error corrected
4/14/2010		Effective date See Act for Effective Date
4/20/2010		Act No. 146

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VERSIONS OF THIS BILL

[2/4/2009](#)
[3/4/2009](#)
[2/3/2010](#)
[2/17/2010](#)
[2/24/2010](#)
[2/25/2010](#)
[3/10/2010](#)
[3/25/2010](#)

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(A146, R159, H3442)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 41-29-300 SO AS CREATE THE WORKFORCE DEPARTMENT APPELLATE PANEL AND PROVIDE FOR ITS COMPOSITION AND A METHOD OF SCREENING AND ELECTING MEMBERS AND A CHAIRMAN, TO PROVIDE A PARTY ONLY MAY APPEAL FROM A DECISION OF THE WORKFORCE DEPARTMENT TO THE PANEL, AND TO REQUIRE A QUORUM OF THE PANEL TO CONDUCT A HEARING OR DECIDE AN APPEAL; BY ADDING SECTION 41-29-310 SO AS TO TRANSFER THE WORKFORCE INVESTMENT ACT PROGRAM FROM THE DEPARTMENT OF COMMERCE TO THE DEPARTMENT OF WORKFORCE; TO AMEND SECTION 1-30-10, AS AMENDED, RELATING TO DEPARTMENTS WITHIN THE EXECUTIVE BRANCH OF STATE GOVERNMENT, SO AS TO ADD THE DEPARTMENT OF WORKFORCE TO THE EXECUTIVE BRANCH OF STATE GOVERNMENT; TO AMEND SECTION 41-29-10, RELATING TO THE EMPLOYMENT SECURITY COMMISSION, SO AS TO PROVIDE CHAPTERS 27 THROUGH 41 OF TITLE 41 ARE ADMINISTERED BY THE DEPARTMENT, AND TO DELETE OTHER LANGUAGE IN THE SECTION; TO AMEND SECTION 41-29-20, RELATING TO THE CHAIRMAN, QUORUM, AND FILLING OF A VACANCY ON THE EMPLOYMENT SECURITY COMMISSION, SO AS TO DELETE THE EXISTING LANGUAGE AND TO PROVIDE THE DEPARTMENT OF WORKFORCE MUST BE MANAGED AND OPERATED BY A DIRECTOR APPOINTED BY THE GOVERNOR, TO PROVIDE THE DIRECTOR SERVES COTERMINOUS TO THE GOVERNOR AND MAYBE REMOVED BY THE GOVERNOR, AND TO PROVIDE THE DIRECTOR SHALL RECEIVE CERTAIN COMPENSATION; TO AMEND SECTION 8-17-370, AS AMENDED, RELATING TO EXEMPTIONS FROM THE STATE EMPLOYMENT GRIEVANCE PROCEDURE, SO AS

TO EXEMPT THE EXECUTIVE DIRECTOR, ASSISTANT DIRECTORS, AND AREA DIRECTORS OF THE DEPARTMENT OF WORKFORCE FROM THE STATE EMPLOYEE GRIEVANCE PROCEDURE; BY ADDING SECTION 41-27-650 SO AS TO PROVIDE THE DEPARTMENT MUST WORK IN CONJUNCTION WITH THE DEPARTMENT OF COMMERCE ON CERTAIN MATTERS AND IN CONJUNCTION WITH THE STATE BUDGET AND CONTROL BOARD ON CERTAIN MATTERS; TO AMEND SECTION 41-33-45, RELATING TO CERTAIN ANNUAL REPORTS REQUIRED OF THE DEPARTMENT, SO AS TO REQUIRE THE DEPARTMENT ANNUALLY MUST REPORT TO THE GENERAL ASSEMBLY, THE REVIEW COMMITTEE, AND THE GOVERNOR THE AMOUNT IN THE UNEMPLOYMENT TRUST FUND AND MAKE AN ASSESSMENT OF ITS FUNDING LEVEL, AND TO SPECIFY CERTAIN REQUIREMENTS OF THE REPORT; TO AMEND SECTION 41-31-10, AS AMENDED, RELATING TO GENERAL RATES OF EMPLOYMENT CONTRIBUTION TO THE UNEMPLOYMENT TRUST FUND, SO AS TO PROVIDE AN EMPLOYER MAY PREPAY HIS REQUIRED CONTRIBUTION TO THIS FUND, AND TO REQUIRE THE DEPARTMENT TO PROMULGATE REGULATIONS REGARDING THE METHODOLOGY FOR CALCULATING THESE PREPAYMENTS AND THE MANNER FOR CREDITING THESE PREPAYMENTS TO THE EMPLOYER'S ACCOUNT; TO AMEND SECTIONS 41-27-10, 41-27-30, 41-27-150, 41-27-160, 41-27-190, 41-27-210, AS AMENDED, 41-27-230, 41-27-235, AS AMENDED, 41-27-260, AS AMENDED, 41-27-360, 41-27-370, AS AMENDED, 41-27-380, 41-27-390, 41-27-510, 41-27-550, 41-27-560, 41-27-570, 41-27-580, 41-27-600, 41-27-610, 41-27-620, 41-27-630, 41-29-40, 41-29-50, 41-29-70, 41-29-80, 41-29-110, 41-29-130, 41-29-140, 41-29-150, 41-29-170, AS AMENDED, 41-29-180, 41-29-190, 41-29-200, 41-29-210, 41-29-220, 41-29-230, 41-29-240, 41-29-270, 41-29-280, 41-29-290, 41-33-10, 41-33-20, 41-33-30, 41-33-40, 41-33-45, 41-33-80, AS AMENDED, 41-33-90, 41-33-100, 41-33-110, 41-33-120, 41-33-130, 41-33-170, 41-33-180, 41-33-190, 41-33-200, 41-33-210, 41-33-430, 41-33-460, 41-33-470, 41-33-610, 41-33-710, 41-35-30, 41-35-100, 41-35-115, AS AMENDED, 41-35-125, 41-35-126, 41-35-130, AS AMENDED, 41-35-140, 41-35-330, 41-35-340, 41-35-410, 41-35-420, AS AMENDED, 41-35-450, 41-35-610, 41-35-630, 41-35-640, AS AMENDED, 41-35-670, 41-35-680, AS AMENDED, 41-35-690, 41-35-700,

41-35-710, AS AMENDED, 41-35-730, 41-35-740, 41-35-750, AS AMENDED, 41-37-20, 41-37-30, 41-39-30, 41-39-40, 41-41-20, AS AMENDED, 41-41-40, AS AMENDED, 41-41-50, 41-42-10, 41-42-20, 41-42-30, AND 41-42-40, ALL RELATING TO VARIOUS DEPARTMENT PROVISIONS, SO AS TO CONFORM THEM TO THE REPLACEMENT OF THE EMPLOYMENT SECURITY COMMISSION WITH THE DEPARTMENT OF WORKFORCE; TO AMEND SECTION 41-29-120, AS AMENDED, RELATING TO EMPLOYMENT STABILIZATION, SO AS TO REQUIRE ADDITIONAL MEASURES; TO AMEND SECTION 41-29-250, RELATING TO PUBLICATION AND FURNISHING OF CERTAIN MATERIAL, SO AS TO PROVIDE ADDITIONAL REQUIREMENTS; TO AMEND SECTION 41-35-110, AS AMENDED, RELATING TO CONDITIONS OF ELIGIBILITY FOR BENEFITS, SO AS TO MAKE A PERSON INELIGIBLE UNDER CERTAIN CIRCUMSTANCES; TO AMEND SECTION 41-35-120, AS AMENDED, RELATING TO DISQUALIFICATION FOR BENEFITS FOR USE OF ILLEGAL DRUGS, SO AS TO PROVIDE THIS DISQUALIFICATION MUST CONTINUE UNTIL CERTAIN CONDITIONS ARE SATISFIED; TO AMEND SECTION 41-35-720, RELATING TO THE CONDUCT OF APPEALED CLAIMS, SO AS TO PROVIDE THE DEPARTMENT MAY PROMULGATE REGULATIONS TO DETERMINE CERTAIN PROCEDURES; BY ADDING SECTION 41-35-760 SO AS TO PROVIDE THE DEPARTMENT MUST PROMULGATE CERTAIN REGULATIONS GOVERNING PROCEEDINGS AND OTHER CERTAIN MATTERS BEFORE THE DEPARTMENT, AND TO SPECIFY CERTAIN REQUIREMENTS FOR THESE REGULATIONS; BY ADDING SECTION 41-35-615 SO AS TO PROVIDE WHEN CERTAIN NOTICES GIVEN AN EMPLOYER MUST BE MADE BY UNITED STATES MAIL OR ELECTRONIC MAIL, AMONG OTHER THINGS; TO AMEND SECTION 41-27-590, RELATING TO THE PROSECUTION OF CERTAIN VIOLATIONS, SO AS TO PROVIDE THE DEPARTMENT MUST REFER CASES OF SIGNIFICANT CLAIMANT FRAUD OR SIGNIFICANT EMPLOYER FRAUD TO THE ATTORNEY GENERAL TO DETERMINE WHETHER PROSECUTION IS APPROPRIATE; BY ADDING ARTICLE 7 TO CHAPTER 13, TITLE 38 SO AS TO PROVIDE THE DEPARTMENT OF INSURANCE MUST CONDUCT CERTAIN EXAMINATIONS, INVESTIGATIONS, AND MAKE CERTAIN REPORTS

RELATED TO THE UNEMPLOYMENT COMPENSATION FUND ADMINISTERED BY THE DEPARTMENT; BY ADDING ARTICLE 7 TO CHAPTER 27, TITLE 41 SO AS TO CREATE THE DEPARTMENT OF WORKFORCE REVIEW COMMITTEE, TO PROVIDE THE COMMITTEE'S COMPOSITION, DUTIES, POWERS, AND ENTITLEMENT TO EXPENSE REIMBURSEMENT; BY ADDING SECTION 41-29-35 SO AS TO PROVIDE FOR THE APPOINTMENT OF THE EXECUTIVE DIRECTOR, THE MANNER OF HIS APPOINTMENT, AND QUALIFICATIONS FOR THE POSITION; BY ADDING SECTION 41-29-25 SO AS TO PROVIDE FOR THE MANNER IN WHICH THE EXECUTIVE DIRECTOR MUST DISCHARGE HIS DUTIES, AMONG OTHER THINGS; TO REPEAL SECTION 41-29-30 RELATING TO THE APPOINTMENT OF A SECRETARY AND CHIEF EXECUTIVE OFFICER OF THE COMMISSION, SECTION 41-29-60 RELATING TO THE ORGANIZATION OF THE COMMISSION AND ITS SEAL, SECTION 41-29-90 RELATING TO THE ADOPTION OF CERTAIN REGULATIONS BY THE COMMISSION RELATED TO THE APPOINTMENT, PROMOTION, AND DEMOTION OF COMMISSION EMPLOYEES, SECTION 41-29-100 RELATING TO THE DELEGATION OF POWERS GRANTED TO THE COMMISSION, SECTION 41-29-130 RELATING TO ADOPTION OF CERTAIN RULES AND REGULATIONS BY THE COMMISSION, AND SECTION 41-29-260 RELATING TO THE ABILITY OF COMMISSIONERS OF THE EMPLOYMENT SECURITY COMMISSION TO FILE OPINIONS OR OFFICIAL MINUTES; AND TO FURTHER PROVIDE FOR THE IMPLEMENTATION OF THIS ACT.

Be it enacted by the General Assembly of the State of South Carolina:

Part I

Creation of Workforce Department Appellate Panel,
Transfer of Workforce Management Act Program to Department of
Workforce, Creation of Department of Workforce, and
Replacement of the Employment Security Commission
With the Department of Workforce

Workforce Appellate Panel created; purpose, powers, and composition

SECTION 1. Chapter 29, Title 41 of the 1976 Code is amended by adding:

“Section 41-29-300. (A) There is created the Workforce Department Appellate Panel within the Department of Workforce, which is separate and distinct from the department’s divisions. The sole purpose of the panel is to hear and decide appeals from decisions of the department’s divisions.

(B)(1) The panel initially must be comprised of the members of the South Carolina Employment Security Commission serving on the day before the effective date of this act. These initial panel members may serve in that temporary capacity until their successors are elected pursuant to this section.

(2) The members of the appellate panel must be elected by the General Assembly, in joint session, for terms of four years and until their successors have been elected and qualified, commencing on the first day of July in each presidential election year. Initial elections for members of the appellate panel must be held before May 22, 2010.

(3) The appellate panel must elect one of its members to be chairman. A vacancy must be filled by the Governor through a temporary appointment until the next session of the General Assembly, at which time a joint session of the General Assembly shall elect an appellate panelist to fill the unexpired term.

(4) The appellate panelists shall receive such compensation as may be established under the provisions of Section 8-11-160 and for which funds have been authorized in the general appropriations act but not to exceed compensation that is commensurate with their hearing duties.

(C) A party only may appeal from a decision of the department directly to the panel. A party only may appeal a decision of the panel to an administrative law court in the manner provided in Section 41-35-750.

(D) A quorum must consist of two panel members and is necessary to hear or decide an appeal under subsection (C). A decision of the panel must be rendered in writing and is subject to disclosure under the Freedom of Information Act.

(E)(1) The Department of Workforce Review Committee must screen a person and find him qualified before he may be elected to serve as a member of the appellate panel. The qualifications that each panelist must possess, include, but are not limited to:

(a) a baccalaureate or more advanced degree from:

(i) a recognized institution of higher learning requiring face-to-face contact between its students and instructors prior to completion of the academic program;

(ii) an institution of higher learning that has been accredited by a regional or national accrediting body; or

(iii) an institution of higher learning chartered before 1962;

or

(b) a background of at least five years in any combination of the following fields of expertise:

(i) general business administration;

(ii) general business management;

(iii) management at the Department of Workforce, or its predecessor;

(iv) human resources management;

(v) finance; or

(vi) law.

(2) A member of the General Assembly may not be elected to serve as a panelist or appointed to be a panelist while serving in the General Assembly; nor shall a member of the General Assembly be elected or appointed to be a panelist for a period of two years after the member either:

(a) ceases to be a member of the General Assembly; or

(b) fails to file for election to the General Assembly in accordance with Section 7-11-15.

(3) When screening an appellate panel candidate and making its findings regarding the candidate, the South Carolina Department of Workforce Review Committee must give due consideration to a person's ability, area of expertise, dedication, compassion, common sense, and integrity.

(F)(1) A panelist is bound by the Code of Judicial Conduct, as contained in Rule 501 of the South Carolina Appellate Court Rules, and the State Ethics Commission is responsible for enforcement and administration of Rule 501 pursuant to Section 8-13-320. A panelist also must comply with the applicable requirements of Chapter 13, Title 8.

(2) A panelist and his administrative assistant annually must attend and successfully complete a workshop of at least three continuing education hours in ethics."

Workforce Investment Act transferred to Department of Workforce

SECTION 2. Chapter 29, Title 41 of the 1976 Code is amended by adding:

“Section 41-29-310. The Workforce Investment Act program created by the Workforce Investment Act of 1988 and transferred to the Department of Commerce by Executive Order 2005-09 is transferred to the Department of Workforce on the effective date of this section.”

Department of Workforce added to Executive branch departments

SECTION 3. Section 1-30-10(A) of the 1976 Code is amended to read:

“(A) There are hereby created, within the executive branch of the state government, the following departments:

1. Department of Agriculture
2. Department of Alcohol and Other Drug Abuse Services
3. Department of Commerce
4. Department of Corrections
5. Department of Disabilities and Special Needs
6. Department of Education
7. Department of Health and Environmental Control
8. Department of Health and Human Services
9. Department of Insurance
10. Department of Juvenile Justice
11. Department of Labor, Licensing and Regulation
12. Department of Mental Health
13. Department of Natural Resources
14. Department of Parks, Recreation and Tourism
15. Department of Probation, Parole and Pardon Services
16. Department of Public Safety
17. Department of Revenue
18. Department of Social Services
19. Department of Transportation
20. Department of Workforce”

Unemployment Security provisions to be administered by Department of Workforce

SECTION 4. Section 41-29-10 of the 1976 Code is amended to read:

“Section 41-29-10. Chapters 27 through 41 of this title shall be administered by the South Carolina Department of Workforce.”

Department of Workforce created; executive director to manage, receive compensation

SECTION 5. Section 41-29-20 of the 1976 Code is amended to read:

“Section 41-29-20. There is hereby created the South Carolina Department of Workforce which must be managed and operated by an executive director nominated by the State Department of Workforce Review Committee and appointed by the Governor. The term of the executive director is conterminous with that of the Governor and until a successor is appointed pursuant to this act. The executive director is subject to removal by the Governor as provided in Section 1-3-240(B). The executive director shall receive compensation as established under the provisions of Section 8-11-160 and for which funds have been authorized in the general appropriations act. For the purposes of this chapter, ‘department’ means the South Carolina Department of Workforce.”

State employment grievance procedure exemptions; certain Department of Workforce directors exempted

SECTION 6. Section 8-17-370 of the 1976 Code, as last amended by Act 353 of 2008, is further amended by adding a new item at the end appropriately numbered to read:

“() the executive director, assistant directors, and the area directors of the South Carolina Department of Workforce created pursuant to Section 1-30-10(A)(20).”

Department must work in conjunction with Department of Commerce and State Budget and Control Board on certain matters

SECTION 7. Article 5, Chapter 27, Title 41 of the 1976 Code is amended by adding:

“Section 41-27-650. (A) The Department of Commerce and the Department of Workforce must work in conjunction to develop or procure computer hardware, software, and other equipment that are compatible with each other as needed to efficiently address the state’s

policy goals as set forth in Section 41-27-20. Once information technology is attained, the departments regularly must develop reports that address relevant workforce issues and make the reports available to workforce training entities, including, but not limited to, the State Board for Technical and Comprehensive Education, the Commission on Higher Education, and the State Agency of Vocational Rehabilitation. Additionally, the departments must respond promptly to inquiries for information made by education and workforce training entities.

(B) The department must work in conjunction with the State Budget and Control Board to coordinate its computer system with computer systems of other state agencies so that the department may more efficiently match unemployed persons with available jobs. The department must provide a progress report concerning implementation of this subsection to the Chairman of the Senate Labor, Commerce and Industry Committee, the Chairman of the House of Representatives Ways and Means Committee, the Department of Workforce Review Committee, and the Governor every three months until fully implemented.

(C) This section is not intended to restrict or hinder the development of an unemployment benefits system financed in whole or in part by the United States Department of Labor.”

Annual reporting requirements; trend chart and certain analyses required

SECTION 8. Section 41-33-45 of the 1976 Code, as added by Act 73 of 1999, is amended to read:

“Section 41-33-45. (A) The department shall report, by October first of each year, to the General Assembly, the Review Committee, and to the Governor the amount in the unemployment trust fund and make an assessment of its funding level.

(B)(1) The annual assessment report must contain a trend chart concerning the unemployment trust fund’s annual balance each year for at least the previous five years. The chart must compare the ending balance for each year with the minimum reserves needed to withstand an average recession and a severe recession.

(2) The annual assessment report also must contain an analysis of the cost paid to beneficiaries and cost-shifting, if any, from companies without a negative balance in their account fund to companies with a negative balance in their fund account. The analysis must be conducted with accepted actuarial principles on the basis of statistics of

employment, business activity, and other relevant factors for the longest possible period. The analysis also must include recommendations for adjusting the tax structure to address inequities that arise due to cost-shifting.”

General employer rates of contribution to Unemployment Trust Fund; prepaying allowed, regulations must determine methods for calculating prepayments and crediting to employer’s account

SECTION 9. Section 41-31-10(A) of the 1976 Code, as last amended by Act 37 of 1999, is further F41-27-230 amended to read:

“(A)Each employer shall pay contributions equal to five and four-tenths percent of wages paid by him during each year except as may be otherwise provided in Chapters 27 through 41 of this title. Employers may prepay their required contributions to the fund. The department must promulgate regulations regarding the methodology by which the allowed prepayment amounts will be calculated and the manner in which they will be credited to the employer’s account.”

Department recommendations on restoring solvency of Unemployment Trust Fund; reporting requirements

SECTION 10. The department must file a report with the General Assembly, the Review Committee, and the Governor on or about January 1, 2011, making recommendations concerning restoration of the solvency of the unemployment trust fund.

Part II

Conforming and Miscellaneous Amendments

Conforming amendment

SECTION 11. Section 41-27-10 of the 1976 Code is amended to read:

“Section 41-27-10. Chapters 27 through 41 of this title shall be known and may be cited as the ‘South Carolina Department of Workforce’.”

Conforming amendment

SECTION 12. Section 41-27-30 of the 1976 Code is amended to read:

“Section 41-27-30. Nothing in Chapters 27 through 41 of this title must be construed to cause the department or the courts of this State in interpreting these chapters to be bound by interpretations as to liability or nonliability of employers by Federal administrative agencies, nor is it the intent of the General Assembly to require an identical coverage of employers under these chapters with coverage requirements pursuant to Section 3101 et seq. of the Federal Internal Revenue Code.”

Conforming amendment

SECTION 13. Section 41-27-150 of the 1976 Code is amended to read:

“Section 41-27-150. ‘Base period’ means the first four of the last five completed calendar quarters immediately preceding the first day of an individual’s benefit year. However, in the case of a combined wage claim filed by an individual in accord with an arrangement entered into by the department pursuant to the provisions of Section 41-29-140(2), the base period is that applicable provided by the law of the paying state.”

Conforming amendment

SECTION 14. Section 41-27-160 of the 1976 Code is amended to read:

“Section 41-27-160. ‘Benefit year’ means the one-year period beginning with the day as of which an insured worker first files a request for determination of his insured status, and afterward the one-year period beginning with the day by which he next files this request after the end of his last preceding ‘benefit year’; provided, that in the case of a combined wage claim filed by an individual in accord with an arrangement entered into by the department pursuant to the provisions of Section 41-29-140(2), the benefit year is that applicable provided by the law of the paying state. The filing of a notice of unemployment is considered a request for determination of insured status if a current benefit year has not previously been established. A

request for determination of insured status must be made pursuant to regulations as the department prescribes.”

Conforming amendment

SECTION 15. Section 41-27-190 of the 1976 Code is amended to read:

“Section 41-27-190. ‘Department’ means the South Carolina Department of Workforce.”

Conforming amendment

SECTION 16. Section 41-27-210(11) of the 1976 Code is amended to read:

“(11) For purposes of paragraphs (2), (6), (7), and (8), employment includes service that would constitute employment but for the fact that the service is considered to be performed entirely within another state pursuant to an election provided by an arrangement entered into in accordance with Section 41-27-550 by the department and an agency charged with the administration of another state or federal unemployment compensation law.”

Conforming amendment

SECTION 17. Section 41-27-230(10) of the 1976 Code is amended to read:

“(10) A service not covered under item (7) of this section and performed entirely without this State, with respect to no part of which contributions are required and paid under an unemployment compensation law of another state or of the federal government, is considered employment subject to Chapters 27 through 41 of this title if the individual performing such services is a resident of this State and the department approves the election of the employing unit for whom the services are performed that the entire service of the individual is considered employment subject to Chapters 27 through 41 of this title.”

Conforming amendment

SECTION 18. Section 41-27-235(C)(2) of the 1976 Code, as last amended by Act 170 of 2004, is further amended to read:

“(2) A Native American tribe or tribal unit that elects to pay a benefit attributable to service in their employ but fails to reimburse the required payment, including an interest and penalty assessment, within ninety days of the receipt of a bill, causes the Native American tribe to lose the option to make a payment in lieu of a contribution for the following tax year unless payment in full is received before the contribution rates for the next year are computed. The department shall notify the United States Internal Revenue Service and the United States Department of Labor of a tribe or tribal unit’s failure to make a required payment within ninety days of a final notice of delinquency.”

Conforming amendment

SECTION 19. Section 41-27-260 of the 1976 Code, as last amended by Act 306 of 2002, is further amended to read:

“Section 41-27-260. The term ‘employment’ as used in Chapters 27 through 41 of this title does not include:

(1) labor engaged in the seafood industry, which is defined as persons employed in the commercial netting, catching, and gathering of seafood, and the processing of such seafood for the fresh market;

(2) casual labor not in the course of the employing unit’s trade or business;

(3) service performed by an individual in the employ of his son, daughter, or spouse and service performed by a child under the age of eighteen in the employ of his father or mother;

(4) service performed in the employ of the United States Government or an instrumentality of the United States immune under the Constitution of the United States from the contributions imposed by Chapters 27 through 41 of this title, except that to the extent that the Congress of the United States permits states to require instrumentalities of the United States to make payments into an unemployment fund under a state unemployment compensation act, all of the provisions of Chapters 27 through 41 of this title are applicable to those instrumentalities and to services performed for those instrumentalities, in the same manner, to the same extent and on the same terms as to all other employers; provided, that if this State is not certified for a year by the Secretary of Labor or his successors under the Federal Internal Revenue Code, the payments required of those instrumentalities with respect to such year must be refunded by the department from the funds in the same manner and within the same period as is provided in Section 41-31-360 with respect to contributions erroneously collected;

(5) service performed after December 31, 1977, in the employ of a governmental entity referred to in Section 41-27-230(2)(b), if the service is performed by an individual in the exercise of his duties as:

(a) an elected official or as the appointed successor of an elected official;

(b) a member of a legislative body, or a member of the judiciary of a state or political subdivision;

(c) a member of the State National Guard or Air National Guard;

(d) an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood, or similar emergency; or

(e) in a position that, pursuant to the laws of this State, is designated as a major nontenured policymaking or advisory position, or a policymaking position the performance of the duties of which ordinarily does not require more than eight hours per week;

(6) service with respect to which unemployment compensation is payable under an unemployment compensation system established by an act of Congress; provided, that the department must enter into agreements with the proper agencies under such act of Congress, which agreements shall become effective ten days after publication of it in the manner provided in Section 41-29-130 for general rules, to provide reciprocal treatment to individuals who have after acquiring potential rights to benefits under Chapters 27 through 41 of this title, acquired rights to unemployment compensation under such act of Congress or who have, after acquiring potential rights to unemployment compensation under such act of Congress, acquired rights to benefits under Chapters 27 through 41 of this title;

(7) service other than service performed as defined in Section 41-27-230(3) performed in the employ of a corporation, community chest, fund or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation, and which does not participate in, or intervene in (including the publishing or distributing of statements), a political campaign on behalf of a candidate for public office, provided, that service performed in the employ of an organization operated for the primary purpose of carrying on a trade or business for profit may not be exempt on the ground, that all of its profits are payable to one or more organizations exempt under this paragraph;

(8) service other than service performed as defined in Section 41-27-230(3) that is performed in a calendar quarter in the employ of

an organization exempt from federal income tax under Section 501(a) (other than an organization described in Section 401(a)) or under Section 521 of the Federal Internal Revenue Code of 1954, if the remuneration for such service is less than fifty dollars;

(9) the term 'employment' does not include:

(a) service performed in the employ of a school, college, or university, if the service is performed by:

(i) a student who is enrolled and is regularly attending classes at the school, college or university; or

(ii) the spouse of a student, if the spouse is advised, at the time the spouse commences to perform the service that the employment of the spouse to perform the service is provided under a program to provide financial assistance to the student by his school, college, or university, and the employment is not covered by a program of unemployment insurance;

(b) service performed by an individual under the age of twenty-two who is enrolled at a nonprofit or public educational institution that normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on as a student in a full-time program, taken for credit at the institution, which combines academic instruction with work experience, if the service is an integral part of the program, and the institution has certified this to the employer, except that this subparagraph does not apply to service performed in a program established for or on behalf of an employer or group of employers;

(c) service performed in the employ of a hospital, if the service is performed by a patient of the hospital, as defined in Section 41-27-280;

(10) for the purposes of Section 41-27-230(2) and (3), 'employment' does not include service performed:

(a) in the direct employ of a church, convention, or association of churches or an organization operated primarily for religious purposes and which is operated, supervised, controlled, or principally supported by a church, convention, or association of churches; or

(b) by an ordained, a commissioned, or a licensed minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by the order; or

(c) in a facility conducted for the purpose of carrying out a program of rehabilitation for individuals whose earning capacity is impaired by age, physical or mental deficiency, or injury or providing remunerative work for individuals who because of their impaired physical or mental capacity cannot be absorbed readily in the

competitive labor market by an individual receiving rehabilitation or remunerative work; or

(d) before January 1, 1978, for a hospital in a state prison or other state correctional institution by an inmate of the prison or correctional institution and after December 31, 1977, by an inmate of a custodial or penal institution; or

(e) as part of an unemployment work-relief or work-training program assisted or financed in whole or in part by a federal agency, an agency or political subdivision of a state, or an individual receiving work relief or work training, unless a federal law, rule, or regulation mandates unemployment insurance coverage to individuals in a particular work-relief or work-training program; or

(f) by an inmate who participates in a project designated by the Director of the Bureau of Justice Assistance pursuant to Public Law 90-351;

(11) service performed by an individual under the age of eighteen in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution;

(12) service performed as a student nurse in the employ of a hospital or a nurses' training school by an individual enrolled and regularly attending classes in a nurses' training school chartered or approved pursuant to state law, and service performed as an intern in the employ of a hospital by an individual who has completed a four-year course in a medical school chartered and approved pursuant to state law;

(13) service performed by an individual for an employer as an insurance agent or as an insurance solicitor, if this service is performed by the individual for his employer for remuneration solely by way of the commission;

(14) service other than service performed as defined in Section 41-27-230(3) by an individual for an employer as a real estate salesman or agent, if this service is performed by the individual for his employer for remuneration solely by way of the commission;

(15) service performed in the employ of a foreign government, including service as a consular or other officer or employee or a nondiplomatic representative;

(16) 'agricultural labor' as defined by Section 41-27-120 and when performed by students who are enrolled and regularly attending classes for at least five months during a particular year at a secondary school or at an accredited college, university, or technical school and also when performed by part-time persons who do not qualify as students pursuant to this section but who at the conclusion of their agricultural labor

would not qualify for benefits pursuant to the provisions of the department;

(17) service performed as a member of a Native American tribal council or service in a fishing rights related activity of a Native American tribe by a member of the tribe for another member of the tribe or by a qualified Native American entity.”

Conforming amendment

SECTION 20. Section 41-27-360 of the 1976 Code is amended to read:

“Section 41-27-360. ‘Statewide average weekly wage’ means the amount computed by the department as of July first of each year that is the aggregate amount of wages, irrespective of the limitation on the amount of wages subject to contributions by reason of Section 41-27-380(2), reported by employers as paid during the first four of the last six completed calendar quarters before this date, divided by a figure representing fifty-two times the twelve-month average of the number of employees in the pay period containing the twelfth day of each month during the same four calendar quarters as reported by those employers.”

Conforming amendment

SECTION 21. Section 41-27-370 of the 1976 Code, as last amended by Act 349 of 2000, is further amended to read:

“Section 41-27-370. (1) An individual is considered ‘unemployed’ in a week during which he performs no services and with respect to which no wages are payable to him or in a week of less than full-time work if the wages payable to him with respect to that week are less than his weekly benefit amount. The department must prescribe regulations applicable to unemployed individuals, making such distinctions in the procedures as to total unemployment, part-total unemployment, partial unemployment of individuals attached to their regular jobs, and other forms of short-time work, as the department considers necessary.

(2) An individual is considered ‘unemployed’ in a week during which no governmental or other pension, retirement or retired pay, annuity, or other similar periodic payment attributable to his employment is payable to him or, if that payment is payable to him with respect to those weeks, the amount of it is less than his weekly

benefit amount. An eligible individual who is unemployed in a week and is receiving a government or other pension, retirement or retired pay, annuity, or other similar periodic payment attributable to his employment must be paid with respect to this week a benefit in an amount equal to his weekly benefit amount less the pension, retirement or retired pay, annuity, or other similar periodic payment payable to him with respect to such week. This benefit, if not a multiple of one dollar, must be computed to the next lower multiple of one dollar. The amount of benefits payable to an individual for a week that begins after the effective date of the applicable provision in the Federal Unemployment Tax Act and that begins in a period with respect to which this individual is receiving a governmental or other pension, retirement or retired pay, annuity, or other similar periodic payment based on the previous work of the individual must be reduced not below zero but by an amount equal to the amount of this pension, retirement or retired pay, annuity, or other payment which is reasonably attributable to such week. However, if the provisions of the Federal Unemployment Tax Act permit, the requirements of this subsection shall apply in the case of a pension, retirement or retired pay, annuity, or other similar periodic payment under a plan maintained, or contributed to, by a base period employer or chargeable employer.

In the event the individual has participated in a pension, retirement or retired pay, annuity, or other similar plan of the base period employer or chargeable employer by having made contributions to this plan, the weekly benefit amount payable to the individual for that week must be reduced, but not below zero, by:

(a) the prorated weekly amount of the pension after deductions of that portion of the pension that is directly attributable to the percentage of the contributions made to the plan by such individual; or

(b) no part of the pension if the entire contributions to the plan were provided by such individual, or by the individual and an employer, or any other person or organization, who is not a base period employer or chargeable employer; or

(c) the entire prorated weekly amount of the pension if subitem (a) or (b) does not apply.

This provision is effective for all weeks commencing on or after August 29, 1982.

For purposes of this subsection, social security benefits are not considered a governmental or other pension, retirement or retired pay, annuity, or other similar periodic payment attributable to the beneficiary's employment. As a result, the offset of social security will be reduced from fifty to zero percent based on the fact that individuals are required to contribute to social security.

(3) An individual may not be considered unemployed in a week in which the department finds that his unemployment is due to a vacation week with respect to which the individual is receiving or has received his regular wages. This subsection does not apply to a claimant whose employer fails to comply, in respect to the vacation period, with the requirements of a regulation or procedure of the department regarding the filing of a notice, report, information, or claim in connection with individual, group, or mass separation arising from the vacation.

(4) An individual may not be considered unemployed in a week, not to exceed two in any benefit year, in which the department finds his unemployment is due to a vacation week that is constituted a vacation period without pay by reason of a written contract between the employer and the employees or by reason of the employer's vacation policy and practice to his employees. This provision applies only if the department finds employment will be available for the claimant with the employer at the end of a vacation period as described in this section. This subsection is not applicable to a claimant whose employer fails to comply, in respect to this vacation period, with the requirements of a regulation or procedure of the department regarding the filing of a notice, report, information, or claim in connection with an individual, group, or mass separation arising from the vacation."

Conforming amendment

SECTION 22. Section 41-27-380 of the 1976 Code is amended to read:

"Section 41-27-380. (A) 'Wages' means remuneration paid for personal services, including commissions and bonuses, sums paid to an employee by an employer pursuant to an order of the National Labor Relations Board or by private agreement, consent, or arbitration for loss of pay by reason of discharge and cash value of all remuneration paid in any medium other than cash. The reasonable cash value of remuneration paid in a medium other than cash is estimated and determined pursuant to regulations prescribed by the department. 'Wages' includes all tip income, including charged tips, received while performing a service that constitutes employment and are included in a written statement furnished to the employer. 'Wages' does not include:

(1) the amount of a payment with respect to services performed on behalf of an individual in its employ provided by a plan or system established by an employing unit which makes provision for individuals in its employ generally or for a class or classes of individuals, including an amount paid by an employing unit for

insurance or annuities or into a fund to provide for any such payment, because of:

- (a) retirement;
- (b) sickness or accident disability;
- (c) medical and hospitalization expenses in connection with sickness or accident disability; or

(d) death, provided the individual is in its employ has not the:

(i) option to receive, instead of provisions for death benefits, part of payment or, if the death benefit is insured, part of the premiums or contributions to premiums paid by his employing unit; and

(ii) right, under a provision of the plan, system, or policy of insurance providing for a death benefit, to assign the benefit or receive a cash consideration in lieu of the benefit either upon his withdrawal from the plan or system providing for the benefit or upon termination of the plan, system, or policy of insurance or of his service with the employing unit;

(2) an amount received from this State or the Federal Government by a member of the South Carolina National Guard, the United States Naval Reserve, the Officers Reserve Corps, the Enlisted Reserve Corps, and the Reserve Corps of Marines as drill pay, including a longevity pay and allowance;

(3) the payment by an employing unit, without deduction from the remuneration of the individual in its employ, of the tax imposed upon an individual in its employ, pursuant to Section 3101 of the Federal Internal Revenue Code, only if the service is agricultural labor or domestic service in a private home of the employer;

(4) a payment, other than vacation pay or sick pay, made to an employee after the month in which he attains the age of sixty-five, if he did not work for the employer in the period for which payment is made;

(5) a remuneration paid in a medium other than cash for a service performed in an agricultural labor or domestic service.

(B) For the purpose of Article 1 Chapter 31, of this title, 'wages' does not include a portion of remuneration that, after remuneration equal to seven thousand dollars has been paid in a calendar year to an individual by an employer or his predecessor or with respect to employment during a calendar year, is paid to the individual by the employer during the calendar year unless that part of the remuneration is subject to a tax under a federal law imposing a tax against which credit may be taken for contributions required to be paid into a state unemployment fund. For the purposes of this subsection, employment includes service constituting employment under any unemployment compensation law of another state."

Conforming amendment

SECTION 23. Section 41-27-390 of the 1976 Code is amended to read:

“Section 41-27-390. ‘Week’ means calendar week or a period of seven consecutive days that the department prescribes by regulation. The department likewise may determine that a week is considered ‘in’, ‘within’, or ‘during’ that benefit year which includes the greater part of that week.”

Conforming amendment

SECTION 24. Section 41-27-510 of the 1976 Code is amended to read:

“Section 41-27-510. The department must promulgate regulations applicable to unemployed individuals, making distinctions in the procedures regarding total unemployment, part-total unemployment, partial unemployment of the individuals attached to their regular jobs and other forms of short-time work as the department considers necessary.”

Conforming amendment

SECTION 25. Section 41-27-550 of the 1976 Code is amended to read:

“Section 41-27-550. The department may enter into agreements with the appropriate agencies of other states or the federal government whereby individuals performing services in this and other states for a single employing unit under circumstances not specifically provided for in Section 41-27-230 or under similar provisions in the unemployment compensation laws of such other states shall be deemed to be engaged in employment performed entirely within this State or within one of such other states and whereby potential rights to benefits accumulative under the unemployment compensation laws of one or more states or under the law of the federal government or both may constitute the basis for the payment of benefits through a single appropriate agency under terms which the department considers fair and reasonable as to all affected interests and will not result in a substantial loss to the fund, and the department may enter into agreements with appropriate agencies of other states or the federal government administering

unemployment compensation laws to provide that contributions on wages for services performed by an individual in more than one state for the same employer may be paid to the appropriate agency of one state.”

Conforming amendment

SECTION 26. Section 41-27-560 of the 1976 Code is amended to read:

“Section 41-27-560. A report, communication, or other similar matter, either oral or written from an employee or employer to the other or to the department or its agents, representatives, or employees that has been written, sent, delivered, or made in connection with the requirements and the administration of Chapters 27 through 41 of this title must not be made the subject matter or basis of a suit for slander or libel in a court of this State.”

Conforming amendment

SECTION 27. Section 41-27-570 of the 1976 Code is amended to read:

“Section 41-27-570. In case of a suit to enjoin the collection of the contributions provided for in Chapters 27 through 41 of this title, to test the validity of those chapters or for another purpose connected with its duties, the department must be made a party to it and the Attorney General or counsel for the department shall defend the suit in accordance with the provisions of Section 41-27-580.”

Conforming amendment

SECTION 28. Section 41-27-580 of the 1976 Code is amended to read:

“Section 41-27-580. In a civil action to enforce the provisions of Chapters 27 through 41 of this title, the department and the State may be represented by a qualified attorney employed by the department and is designated by it for this purpose or, at the department’s request, by the Attorney General.”

Conforming amendment

SECTION 29. Section 41-27-600 of the 1976 Code is amended to read:

“Section 41-27-600. The department may compromise a civil penalty or cause of action arising pursuant to a provision of Chapters 27 through 41 of this title instead of commencing suit on them and may compromise the case after suit on it commences. In these cases the department shall keep on file in its office the reasons for settlement by compromise; a statement on the amount of contribution imposed; the amount of additional contribution, penalty, or interest imposed by law in consequence of neglect or delinquency; and the amount actually paid pursuant to the terms of the compromise.”

Conforming amendment

SECTION 30. Section 41-27-610 of the 1976 Code is amended to read:

“Section 41-27-610. The failure to do an act required pursuant to a provision of Chapters 27 through 41 of this title is considered an act committed in part at the office of the department.”

Conforming amendment

SECTION 31. Section 41-27-620 of the 1976 Code is amended to read:

“Section 41-27-620. The certificate of the department to the effect that a contribution has not been paid, that a report has not been made, that information has not been furnished, or that records have not been produced or made available for inspection, as required pursuant to Chapters 27 through 41 of this title, is prima facie evidence of the alleged action.”

Conforming amendment

SECTION 32. Section 41-27-630 of the 1976 Code is amended to read:

“Section 41-27-630. A benefit is considered due and payable pursuant to Chapters 27 through 41 of this title only to the extent

provided in those chapters and to the extent that money is available for them to the credit of the unemployment compensation fund and neither the State nor the department must be liable for an amount in excess of that sum.”

Conforming amendment

SECTION 33. Section 41-29-40 of the 1976 Code is amended to read:

“Section 41-29-40. There are created under the department two coordinate divisions, the South Carolina State Employment Service Division created pursuant to Section 41-5-10, and a division to be known as the Unemployment Compensation Division. Each division must be administered by a full-time salaried director, who is subject to the supervision and direction of the department. The department may appoint, fix the compensation of, and prescribe the duties of the directors of these divisions. These appointments must be made on a nonpartisan merit basis in accordance with the provisions of Section 41-29-90. The director of each division shall be responsible to the department for the administration of his respective division and has the power and authority as vested in him by the department.”

Conforming amendment

SECTION 34. Section 41-29-50 of the 1976 Code is amended to read:

“Section 41-29-50. The executive director may appoint local or industry advisory councils, composed in each case of equal numbers of employer representatives and employee representatives, who may fairly be regarded as representatives because of their vocation, employment or affiliations, and of members representing the general public as the executive director designates. Local councils shall aid the department in formulating a policy and discussing problems relating to the administration of Chapters 27 through 41 of this title, and in assuring impartiality and freedom from political influence in the solution of those problems. Members of local advisory councils must serve without compensation, must receive per diem, mileage, and subsistence as provided by law for members of boards, commissions, and committees.”

Conforming amendment

SECTION 35. Section 41-29-70 of the 1976 Code is amended to read:

“Section 41-29-70. Subject to the provisions of Chapters 27 through 41 of this title, the department may employ or retain on a contract basis other accountants, attorneys, experts necessary to perform the department’s duties.”

Conforming amendment

SECTION 36. Section 41-29-80 of the 1976 Code is amended to read:

“Section 41-29-80. The department shall:

(1) classify all positions under Chapters 27 through 41 of this title except those exempted by the Federal Social Security Act or regulations of the Secretary of Labor or his successors; and

(2) establish salary schedules and minimum personnel standards. These standards must conform to the minimum standards prescribed under the provisions of Section 303(a)(1) of the Federal Social Security Act, as amended, and applicable state law and regulations.”

Conforming amendment

SECTION 37. Section 41-29-110 of the 1976 Code is amended to read:

“Section 41-29-110. The department must promulgate regulations necessary to carry out the provisions of Chapters 27 through 41 of this title, employ personnel, make expenditures, require reports not otherwise provided for in these chapters, conduct investigations or take other action as it considers necessary or suitable to administer its duties and exercise its powers pursuant to the title.”

Employment stabilization; additional measures required

SECTION 38. Section 41-29-120 of the 1976 Code, as last amended by Act 203 of 2002, is further amended to read:

“Section 41-29-120. (A)(1) The department, with the advice and aid of its advisory councils and through its appropriate divisions, shall take appropriate steps to:

- (a) reduce and prevent unemployment;
- (b) encourage and assist in adopting practical methods of vocational training, retraining, and vocational guidance;
- (c) investigate, recommend, advise, and assist in establishing and operating, by a municipality, county, school district, and the State, of reserves for public works to be used in times of business depression and unemployment;
- (d) promote the reemployment of unemployed workers throughout the State in every other way that is feasible; and
- (e) promote the joint electronic filing of Employer Unemployment Insurance Benefits Payments and Reports in conjunction with South Carolina Business One Stop to provide employment units a single point of contact for reporting and paying state taxes.

(2) While pursuing these goals, the department also shall carry on and publish the results of statistical surveys, investigations, and research studies.

(B) The department may require from an employing unit for the department’s cooperation with the Bureau of Labor Statistics of the United States Department of Labor or its successor agency the United States Bureau of Labor Statistics report to:

- (1) assign industry codes to South Carolina employers under the ES-202 Covered Employment and Wages Program;
- (2) collect employment information on multiple worksites for South Carolina employers under the ES-202 Covered Employment and Wages Program;
- (3) collect monthly employment, hours, and earnings from South Carolina employers under the BLS-790 Current Employment Statistics Program;
- (4) collect employment information from federal employers under the ES-202 Covered Employment and Wages Program; and
- (5) collect occupational employment and wage information from South Carolina employers under the Occupational Employment Statistics Program.

(C) As used in this section, ‘employing unit’ means an entity employing more than twenty individuals.

(D) The department must institute the following measures to the fullest extent possible under state and federal law:

(1) increase eligibility reviews and investigations as to violations of Sections 41-35-110 and 41-35-120 and enforce appropriate disqualifications and penalties;

(2) increase investigations of violations of Chapter 41, Title 41 and enforce appropriate penalties;

(3) increase investigations of violations of Article 3, Chapter 31, Title 41 and enforce appropriate penalties;

(4) keep detailed voting and attendance records at all department and appellate panel hearings and make them available to the General Assembly;

(5) keep detailed travel and expense records for department employees and appellate panelists and make them available to the General Assembly;

(6) continue to work with the South Carolina Budget and Control Board and Office of Research and Statistics to develop and continuously improve a customer service portal, to include increased interagency integration and data sharing, and keep the General Assembly regularly informed of its progress in upgrading its computer system through a possible multistate compact in cooperation with the federal government;

(7) report to the Chairman of the House Ways and Means Committee and the Chairman of the Senate Labor, Commerce and Industry Committee within five days of the effective date of this act as to the degree the department can accomplish or cannot accomplish each subitem in this subsection, and provide reasons why a subitem cannot be accomplished if the department cannot do so;

(8) report to the Chairman of the House Ways and Means Committee and the Chairman of the Senate Labor, Commerce and Industry Committee on the first day of each month in Fiscal Years 2010 and 2011 on the progress of each request; and

(9) take all other actions necessary and prudent to effectively and efficiently manage the state's unemployment benefits program."

Conforming amendment

SECTION 39. Section 41-29-140 of the 1976 Code is amended to read:

"Section 41-29-140. The department may enter an arrangement with the appropriate agency of another state or of the federal government with respect to the combination of wages:

(1) An agreement with the federal government where wages or services, upon the basis of which an individual may become entitled to

benefits under an unemployment compensation law of the federal government, are considered wages for employment by an employer for the purpose of Sections 41-35-10 to 41-35-100 if the agency of the federal government agrees to reimburse the fund for the portion of benefits paid under Chapters 27 through 41 of this title on the basis of these wages or services as the department finds will be fair and reasonable and the department will reimburse the agency of the federal government with a reasonable portion of benefits paid under law of the federal government on the basis of employment or wages for employment by employers the department finds will be fair and reasonable to all affected interests.

(2) The department shall participate in an arrangement for the payment of compensation on the basis of combining an individual's wages and employment covered under Chapters 27 through 41 of this title with his wages and employment covered under the unemployment compensation law of another state approved by the United States Secretary of Labor in consultation with the state unemployment compensation agencies as reasonably calculated to assure the prompt and full payment of compensation in those situations and that includes provisions for:

(a) applying the base period of a single state law to a claim involving the combining of an individual's wages and employment covered under two or more state unemployment compensation laws; and

(b) avoiding the duplicate use of wages and employment by reason of this combining.

(3) This reimbursement is considered a benefit for the purpose of Section 41-35-50 and Article 1, Chapter 33 of this title. The department may make to another state or federal agency and receive from another state or federal agency reimbursement from or to the fund in accordance with and made pursuant to this section."

Conforming amendment

SECTION 40. Section 41-29-150 of the 1976 Code is amended to read:

"Section 41-29-150. An employing unit must keep true and accurate work records containing information the department prescribes. These records must be open to inspection and subject to being copied by the department or its authorized representative at a reasonable time and as often as necessary. The department and the chairman of an appeal tribunal may require from an employing unit a

sworn or unsworn report with respect to persons employed by it that he or it considers necessary for the effective administration of Chapters 27 through 41 of this title. Information obtained in this manner or from an individual pursuant to the administration of these chapters, except to the extent necessary for the proper administration of such chapters, shall be held confidential and may not be published or be open to public inspection, other than to the public employees in the performance of their public duties, in any manner revealing the individual's or employing unit's identity. However, a claimant or his legal representative at a hearing before an appeal tribunal must be supplied information from these records to the extent necessary for the proper presentation of his claim. An employee or member of the department who violates a provision of this section must be fined not less than twenty dollars or more than two hundred dollars, imprisoned for not longer than ninety days, or both."

Conforming amendment

SECTION 41. Section 41-29-170 of the 1976 Code, as last amended by Act 203 of 2002, is further amended to read:

"Section 41-29-170. (A) A claimant or his legal representative must be supplied with information from the records, to the extent necessary for the proper presentation of his claim in a proceeding pursuant to Chapters 27 through 41, subject to restrictions the department may prescribe by regulation.

(B)(1) Upon written request, the department may furnish information obtained through the administration of Chapters 27 through 42 including, but not limited to, the name, address, ordinary occupation, wages, and employment status of a covered worker or recipient of benefits and the recipient's rights to additional benefits pursuant to Chapters 27 through 41, to:

(a) an agency or agent of the United States charged with the administration of public works or assistance through public employment;

(b) a state agency similarly charged; and

(c) an agency or entity to which disclosure is permitted or required by federal statute or regulation or by state law.

(2) This disclosure is subject to restrictions the department may prescribe by regulation.

(C)(1) The State Employment Office must furnish, upon request of a public agency administering the Temporary Assistance to Needy Families (TANF) or child support programs, a state agency

administering food stamp coupons, a state or federal agency administering the new hire directory, or a public housing authority, information in its possession relating to:

- (a) an individual who is receiving, has received, or has applied for unemployment insurance;
- (b) the amount of benefits being received;
- (c) the current home address of these individuals;
- (d) whether an offer of work has been refused and, if so, a description of the job and the terms, conditions, and rate of pay;
- (e) in the case of requests from a public housing authority, a listing of the current employer and previous employers for the available preceding six calendar quarters;
- (f) in the case of requests from the state or federal agency that issues food stamp coupons or the new hire directory, a listing of the current employer and address and previous employers and their addresses, including wage information, for the available preceding six calendar quarters.

The requesting agency is responsible for reimbursing the department for actual costs incurred in supplying the information. This information must be provided in the most useful and economical format possible.”

Conforming amendment

SECTION 42. Section 41-29-180 of the 1976 Code is amended to read:

“Section 41-29-180. The department shall endeavor, both for the relief of the clerical work of employers and its own office, to confine reporting to the minimum necessary for the proper administration of the law, and, except for necessary separation, low earnings, special reports or notices, or wage and employment reports required pursuant to Section 41-29-140, it shall not require reports as to the earnings of individual employees more frequently than quarterly.”

Conforming amendment

SECTION 43. Section 41-29-190 of the 1976 Code is amended to read:

“Section 41-29-190. In the discharge of the duties imposed by Chapters 27 through 41 of this title, the department or a duly authorized representative of it may administer an oath and affirmation, take a deposition, certify to an official act and issue a subpoena to compel the

attendance of a witness and the production of books, papers, correspondence, memoranda and other records considered necessary as evidence in connection with a disputed claim or the administration of Chapters 27 through 41 of this title.”

Conforming amendment

SECTION 44. Section 41-29-200 of the 1976 Code is amended to read:

“Section 49-21-200. A person must not be excused from attending and testifying or from producing books, papers, correspondence, memoranda, or other records before the department, an appeal tribunal, or their duly authorized representative or in obedience to the subpoena of them in a cause or proceeding before the department or an appeal tribunal on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture. An individual must not be prosecuted or subjected to a penalty or forfeiture for or on account of a transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self incrimination, to testify or produce evidence, documentary or otherwise, except that the individual testifying must not be exempt from prosecution and punishment for perjury committed in testifying.”

Conforming amendment

SECTION 45. Section 41-29-210 of the 1976 Code is amended to read:

“Section 41-29-210. (1) In case of contumacy by a person or refusal to obey a subpoena issued to a person, a court of this State or judge of this State within the jurisdiction of which the person guilty of contumacy or refusal to obey is found, resides, or transacts business, upon application by the department or a duly authorized representative may issue to him an order requiring him to appear before the department or a duly authorized representative of the department to produce evidence if ordered to do so or to give testimony touching the matter under investigation or in question. Failure to obey an order of the court may be punished as a contempt of the order.

(2) A person who, without just cause, fails or refuses to attend and testify; to answer a lawful inquiry; or to produce books, papers, correspondence, memoranda and other records, if it is in his power to

do this in accordance with a subpoena of the department or a duly authorized representative, must be punished by a fine of not less than twenty nor more than two hundred dollars or by imprisonment for not more than thirty days. Each failure to obey a subpoena constitutes a separate offense.”

Conforming amendment

SECTION 46. Section 41-29-220 of the 1976 Code is amended to read:

“Section 41-29-220. The department may request the Comptroller of the Currency of the United States to cause an examination of the correctness of a return or report of a national banking association rendered pursuant to the provisions of Chapters 27 through 41 of this title, and may in connection with this request transmit this report or return it to the Comptroller of the Currency of the United States as provided in Section 3305(c) of the federal Internal Revenue Code.”

Conforming amendment

SECTION 47. Section 41-29-230 of the 1976 Code is amended to read:

“Section 41-29-230. (1) In the administration of Chapters 27 through 41 of this title, the department must cooperate with the United States Secretary of Labor to the fullest extent consistent with the provisions of these chapters, and act, through the promulgation of appropriate rules, regulations, administrative methods and standards, as necessary to secure to this State and its citizens all advantages available under the provisions of the Social Security Act that relate to unemployment compensation, the Federal Unemployment Tax Act, the Wagner-Peyser Act, and the Federal-State Extended Unemployment Compensation Act of 1970.

(2) In the administration of the provisions in Article 3 Chapter 35, of this title, which are enacted to conform with the requirements of the Federal-State Extended Unemployment Compensation Act of 1970, the department must act as necessary to:

(a) ensure that the provisions are interpreted and applied to meet the requirements of the federal act as interpreted by the United States Secretary of Labor; and

(b) secure to this State the full reimbursement of the federal share of extended benefits paid pursuant to this title that are reimbursable under the federal act.”

Conforming amendment

SECTION 48. Section 41-29-240 of the 1976 Code is amended to read:

“Section 41-29-240. The department may make the state’s record relating to the administration of Chapters 27 through 41 of this title available to the Railroad Retirement Board and may furnish the Railroad Retirement Board, at the board’s expense, copies of this record as the Railroad Retirement Board considers necessary for its purposes. The department may afford reasonable cooperation with an agency of the United States charged with the administration of an unemployment insurance law.”

Publication and furnishing of certain material

SECTION 49. Section 41-29-250 of the 1976 Code is amended to read:

“Section 41-29-250. The department must:

(A) print and make available for public distribution the text of Chapters 27 through 41 of this title and its:

- (1) regulations;
- (2) annual reports to the Governor and General Assembly; and
- (3) other material the department considers relevant and suitable;

and

(B) furnish this material to a person on request and make it available on its Internet website.”

Conforming amendment

SECTION 50. Section 41-29-270 of the 1976 Code is amended to read:

“Section 41-29-270. Notwithstanding the provisions of Chapters 27 through 41 of this title, the department must promulgate regulations necessary for the operation of an emergency unemployment compensation system in the event of an enemy attack that disrupts or endangers the department’s usual procedures or facilities.”

Conforming amendment

SECTION 51. Section 41-29-280 of the 1976 Code is amended to read:

“Section 41-29-280. Not later than the fifteenth day of January annually, the department shall submit to the Governor and the General Assembly a report covering the administration and operation of Chapters 27 through 41 of this title during the preceding fiscal year and make recommendations for amendments to these chapters as the department considers proper. These reports must include a balance sheet of the money in the fund in which there must be provided, if possible, a reserve against the liability in future years to pay benefits in excess of the then current contributions, which reserves must be set up by the department in accordance with accepted actuarial principles on the basis of statistics of employment, business activity, and other relevant factors for the longest possible period.”

Conforming amendment

SECTION 52. Section 41-29-290 of the 1976 Code is amended to read:

“Section 41-29-290. When the department believes a change in contribution or benefit rates is necessary to protect the solvency of the fund, it promptly must inform the Governor and the General Assembly of this information and make recommendations regarding it.”

Conforming amendment

SECTION 53. Section 41-33-10 of the 1976 Code is amended to read:

“Section 41-33-10. There is established a special fund, to be known as the unemployment compensation fund, which must be administered separate and apart from all public monies or funds of the State. This fund must consist of:

- (1) all contributions and payments in lieu of contributions collected under Chapters 27 through 41 of this title;
- (2) interest earned on any money in the fund;
- (3) property or securities acquired through the use of money belonging to the fund;

- (4) earnings of those properties or securities;
- (5) money credited to this State's account in the unemployment trust fund pursuant to Section 903 of the Social Security Act, as amended;
- (6) money received from the federal government as reimbursements pursuant to Section 204 of the Federal-State Extended Compensation Act of 1970; and
- (7) money received for the fund from another source. Money in the fund must be comingled and undivided."

Conforming amendment

SECTION 54. Section 41-33-20 of the 1976 Code is amended to read:

"Section 41-33-20. Subject to the provisions of Chapters 27 through 41 of this title, the department is invested with the full power, authority, and jurisdiction over the fund, including all money, property, and securities belonging to it, and may perform any and all acts, whether or not specifically designated in this title, which are necessary or convenient in the administration of this title consistent with the provisions of those chapters."

Conforming amendment

SECTION 55. Section 41-33-30 of the 1976 Code is amended to read:

"Section 41-33-30. The State Treasurer is ex officio treasurer and custodian of the fund and shall administer it pursuant to the directions of the department and shall issue his warrants upon it pursuant to regulations promulgated by the department."

Conforming amendment

SECTION 56. Section 41-33-40 of the 1976 Code is amended to read:

"Section 41-33-40. All money in the fund must be comingled and undivided, but the State Treasurer shall maintain within the fund three separate accounts:

- (a) a clearing account;
- (b) an unemployment trust fund account; and

(c) a benefit account.

All money payable to the fund, upon receipt of the money by the department, must be forwarded to the State Treasurer who immediately shall credit it to the clearing account.”

Conforming amendment

SECTION 57. Section 41-33-80 of the 1976 Code, as last amended by Act 306 of 2002, is further amended to read:

“Section 41-33-80. Except as provided in Section 41-33-180, money must be requisitioned from this State’s account in the unemployment trust fund solely for the payment of benefits or refunds pursuant to Section 41-31-360 or item (6) of Section 41-27-260 and in accordance with regulations prescribed by the department; except that money credited to this account pursuant to Section 903 of the Social Security Act, as amended, must be used exclusively as provided in Sections 41-33-130 to 41-33-160.”

Conforming amendment

SECTION 58. Section 41-33-90 of the 1976 Code is amended to read:

“Section 41-33-90. The department shall from time to time issue its requisition for a lump sum amount for the payment of benefits or refunds upon the Comptroller General who shall draw his warrant on the State Treasurer in the form provided by law. The Treasurer shall pay this amount to the department by a check drawn on the benefit account, notwithstanding any provisions of law in this State relating to deposit, administration, release and disbursement of money in the possession or custody of this State to the contrary. The department in requisitioning lump sum withdrawals from the State Treasurer for the payment of individual benefit claims shall not exceed in any event the balance of funds in the benefit account, and the requisition must be in an amount estimated to be necessary for benefit payments for a period that the department may prescribe by regulation.”

Conforming amendment

SECTION 59. Section 41-33-100 of the 1976 Code is amended to read:

“Section 41-33-100. Such lump sum amounts when received by the department from the State Treasurer must be immediately deposited by the department in a benefit payment account maintained in the name of the department in that bank or public depository and under conditions the department determines necessary. The bank or public depository must be one in which general funds of the State may be deposited, but no public deposit insurance charge or premium shall be paid out of the fund or benefit payment account. The department shall require the bank or depository it selects as the depository of the benefit payment account security in an amount equal to the amount on deposit. This security must consist of securities or a surety bond required by law of depositories of state funds.”

Conforming amendment

SECTION 60. Section 41-33-110 of the 1976 Code is amended to read:

“Section 41-33-110. The department shall delegate to designated representatives the authority to sign checks on the benefit payment account and the signature of one of the designated representatives must be required on each check. The department shall require the representative to give a bond in an amount the department determines for his faithful performance of his duties in connection with the benefit payment account in a form prescribed by law or approved by the Attorney General. Premiums for these bonds must be paid from the unemployment compensation administration fund. A duly authorized representative of the department may draw and issue its checks on the benefit payment account for the payment of individual benefit claims.”

Conforming amendment

SECTION 61. Section 41-33-120 of the 1976 Code is amended to read:

“Section 41-33-120. A refund payable pursuant to Section 41-31-360 or item (6) of Section 41-27-260 may be paid from the clearing or benefit accounts upon requisition by the department to the Comptroller General, who shall draw his warrant in the usual form provided by law on the State Treasurer, who shall pay the refund from the proper account.”

Conforming amendment

SECTION 62. Section 41-33-130 of the 1976 Code is amended to read:

“Section 41-33-130. An expenditure of money in the benefit account and a refund from the clearing account must not be subject to a provision of law requiring a specific appropriation or other formal release by state officers of money in their custody. A warrant issued for the payment of a benefit and a refund must bear the signature of the department or a duly authorized agent for that purpose.”

Conforming amendment

SECTION 63. Section 41-33-170 of the 1976 Code is amended to read:

“Section 41-33-170. A balance of money requisitioned from the unemployment trust fund under Section 41-33-80 which remains unclaimed or unpaid in the benefit account and the benefit payment account after the expiration of the period for which those sums were requisitioned either must be deducted from an estimate for, and may be used for the payment of, a benefit during a succeeding period or, in the discretion of the department, must be redeposited with the Secretary of the Treasury of the United States to the credit of this State’s account in the unemployment trust fund, as provided in Section 41-33-50.”

Conforming amendment

SECTION 64. Section 41-33-180 of the 1976 Code is amended to read:

“Section 41-33-180. Money also may be requisitioned from this State’s account in the unemployment trust fund for the payment of benefits under an unemployment compensation, unemployment insurance, or unemployment benefit law administered by a bureau, department, division, agency, or instrumentality of the United States to which the department has made available its personnel and facilities for the taking, processing, determination, and paying of claims pursuant to Section 41-29-230. No money may be drawn from the unemployment trust fund for the purpose of paying benefits for or on behalf of the United States unless a provision first is made by law, agreement, or contract for the reimbursement of the money by the bureau,

department, division, agency, or instrumentality of the United States for or on behalf of which the benefits have been paid.”

Conforming amendment

SECTION 65. Section 41-33-190 of the 1976 Code is amended to read:

“Section 41-33-190. The department may establish bank accounts other than the benefit payment account and deposit in them money requisitioned from the unemployment trust fund for the payment of benefits for or on behalf of the United States as provided in Section 41-33-180. All provisions of this article governing the deposit, administration, mode of check signing, and safeguarding of the benefit payment account must apply to an account established by the department under this section.”

Conforming amendment

SECTION 66. Section 41-33-200 of the 1976 Code is amended to read:

“Section 41-33-200. A balance of money requisitioned from the unemployment trust fund under Section 41-33-180 which remains unclaimed or not disbursed in those accounts after the expiration of the period for which the sums were requisitioned either must be deducted from estimates for, and used in the payment of, benefits during succeeding periods or, in the discretion of the department, must be redeposited with the Secretary of the Treasury of the United States to the credit of this State’s account in the unemployment trust fund, as provided in Section 41-33-50.”

Conforming amendment

SECTION 67. Section 41-33-210 of the 1976 Code is amended to read:

“Section 41-33-210. The provisions of this article to the extent that they relate to the unemployment trust fund must be operative only so long as the Secretary of the Treasury of the United States continues to maintain for this State a separate book account of all funds deposited in the trust fund by this State for benefit purposes, together with this State’s proportionate share of the earnings of the unemployment trust

fund, from which no other state is permitted to make withdrawals. If and when the unemployment trust fund ceases to exist or a separate book account is no longer maintained, all money, properties, or securities in the trust fund belonging to the unemployment compensation fund of this State must be transferred to the treasurer of the unemployment compensation fund, who shall hold, invest, transfer, sell, deposit, and release the money, properties, or securities in a manner approved by the department in accordance with the provisions of Chapters 27 through 41 of this title. This money must be invested only in readily marketable bonds or other interest bearing obligations of the United States or of this State or a political subdivision of this State and these investments at all times must be made so that all the assets of the fund always must be readily convertible into cash when needed for the payment of benefits. The treasurer shall dispose of securities or other properties belonging to the unemployment compensation fund only under the direction of the department in accordance with the purposes and provisions of Chapters 27 through 41 of this title.”

Conforming amendment

SECTION 68. Section 41-33-430 of the 1976 Code is amended to read:

“Section 41-33-430. Money deposited or paid into the fund are appropriated and made available to the department. Money in this fund must be expended solely for the purpose of defraying the cost of the administration of Chapters 27 through 41 of this title and for no other purpose. A balance in the fund may not lapse at any time but continuously must be available to the department for expenditure consistent with Chapters 27 through 41 of this title. The department shall issue its requisition approved by the chairman or a designated member, officer, or agent for payment of the costs of administration to the Comptroller General who shall draw his warrant in the usual form provided by law on the State Treasurer, who shall pay it by check on the employment security administration fund.”

Conforming amendment

SECTION 69. Section 41-33-460 of the 1976 Code is amended to read:

“Section 41-33-460. Money in the employment security administration fund, paid to this State under Title III of the Social

Security Act and the Wagner-Peyser Act, found by the Secretary of Labor, or his successors, because of an action or contingency, to have been lost or expended for a purpose other than, or in an amount in excess of, those found necessary by the Secretary of Labor, for the proper administration of the employment security program, it is the policy of this State that the money must be replaced by money appropriated for this purpose from the general funds of this State to the employment security administration fund for expenditures as provided in Section 41-33-430. Funds that have been expended by the department or its agents pursuant to a budget approved by the Secretary of Labor, pursuant to the general standards and limitations promulgated by the Secretary of Labor, before this expenditure, when proposed expenditures have not been specifically disapproved by the Secretary of Labor, must not be considered to require replacement.”

Conforming amendment

SECTION 70. Section 41-33-470 of the 1976 Code is amended to read:

“Section 41-33-470. The department shall report to the State Budget and Control Board in the same manner as is required generally for the submission of financial requirements for the ensuing year and the board shall include in its request for general appropriations presented to the General Assembly at its next regular session a statement of the amounts required for any replacement required by Section 41-33-460.”

Conforming amendment

SECTION 71. Section 41-33-610 of the 1976 Code is amended to read:

“Section 41-33-610. (A) There is created in the State Treasury a special fund to be known as the employment security special administration fund, which must consist of all penalties and interest collected on contributions due pursuant to Sections 41-31-330 and 41-31-350 and interest collected on unpaid contributions pursuant to Section 41-31-370. Money in the fund must be deposited, administered, and disbursed pursuant to the provisions of Section 41-33-420 applicable to the employment security administration fund.

(B) Money deposited in the special administration fund is appropriated and made available to the department. Money in the fund must be expended solely for:

(1) replacements in the employment security administration fund as provided in Section 41-33-460;

(2) refunds pursuant to Section 41-31-360 of interest erroneously collected; and

(3) special, extraordinary, and incidental expenses incurred in the administration of Chapters 27 through 41 of this title not provided for in the employment security administration fund and for which federal funds are not granted by the federal government through the Secretary of Labor or its other agencies.

(C) A balance in the fund shall not lapse at any time, but must be continuously available to the department for expenditure consistent with Chapters 27 through 41 of this title. The department shall issue its requisition approved by its director or his designated officer or agent for the purposes set forth in this section to the Comptroller General who shall draw his warrant in the usual form provided by law on the State Treasurer, who shall pay it by check on the fund.”

Conforming amendment

SECTION 72. Section 41-33-710 of the 1976 Code is amended to read:

“Section 41-33-710. (A) There is created in the State Treasury a special fund to be known as the employment security administrative contingency fund, which consists of all assessments collected pursuant to Section 41-27-410. Money in the employment security administrative contingency fund must be deposited, administered, and disbursed in accordance with the provisions of Section 41-33-420 applicable to the employment security administration fund.

(B) Money deposited in the employment security administrative contingency fund is appropriate and made available to the department. Money in the fund must be expended to:

(1) assist with the reemployment of unemployed workers using the most efficient and effective means of service delivery;

(2) undertake a program or activity that furthers the goal of the department as provided in Chapter 42 of this title;

(3) supplement basic employment security services with special job search and claimant placement assistance designed to assist unemployment insurance claimants to obtain employment;

(4) provide employment services, like recruitment, screening, and referral of qualified workers to agricultural areas where those services have in the past contributed to positive economic conditions for the agricultural industry; and

(5) provide otherwise unobtainable information and analysis to the legislature and program managers about issues related to employment and unemployment.

(C) A balance in the fund does not lapse, but is continuously available to the department for expenditure consistent with Chapter 42 of this title. The department must issue its requisition approved by its director or his designated officer or agent for the purposes set forth in this section to the Comptroller General who shall draw his warrant in the usual form provided by law on the State Treasurer, who shall pay it by check on the fund.”

Conforming amendment

SECTION 73. Section 41-35-30 of the 1976 Code is amended to read:

“Section 41-35-30. (A) When a benefit due an individual has been unpaid at the time of death and the estate of the individual has not been administered in the probate court within sixty days after the time of death, the department may pay benefit amounts the deceased may have been entitled to:

- (1) the surviving wife or husband and, if there is none;
- (2) the minor children and, if there are none;
- (3) the adult children and, if there are none;
- (4) the parents of the deceased and, if there are none;
- (5) a person dependent on the deceased.

(B) If there is no person within those classifications, the payments due the deceased must lapse and revert to the unemployment trust fund.

(C) Payment to a responsible adult with whom minor children are making their home, upon a written pledge to use the payment for the benefit of these minors, is considered proper and legal payment to the minor children without the requirement of formal appointment of a guardian.”

Conforming amendment

SECTION 74. Section 41-35-100 of the 1976 Code is amended to read:

“Section 41-35-100. The department must promulgate regulations necessary to preserve the benefit rights of individuals who volunteer, enlist, or are called or drafted into a branch of the military, naval service, or an organization affiliated with the defense of the United

States or this State. These regulations, with respect to these individuals, must supersede an inconsistent provision of Chapters 27 through 41 of this title, but where practicable must secure results reasonably similar to those provided in the analogous provisions of these chapters.”

Conditions for benefit eligibility; ineligibility for certain circumstances

SECTION 75. Section 41-35-110 of the 1976 Code, as last amended by Act 497 of 1994, is further amended to read:

“Section 41-35-110. An unemployed insured worker is eligible to receive benefits with respect to a week only if the department finds he:

(1) has made a claim for benefits with respect to that week pursuant to regulations prescribed by the department;

(2) has registered for work and after work has continued to report at an employment office, except that the department, by regulation, may waive or alter either or both of the requirements of this paragraph as to individuals attached to regular jobs; provided, that no regulation conflicts with Sections 41-35-10 or 41-35-30;

(3) is able to work and is available for work at his usual trade, occupation, or business or in another trade, occupation, or business for which he is qualified based on his prior training or experience; is available for this work either at a locality at which he earned wages for insured work during his base period or, if the individual has moved, to a locality where it may reasonably be expected that work suitable for him under the provisions of Section 41-35-120(3)(b) is available; and, in addition to having complied with subsection (2), is himself actively seeking work; provided, however:

(a) notwithstanding another provision of Chapters 27 through 41 of this title, an otherwise eligible individual may not be denied a benefit with respect to a week in which he is in training with the approval of the department by reason of the application of the provision of this section relating to availability for work and an active search for work;

(b) a claimant may not be eligible to receive a benefit or waiting period credit if engaged in self-employment of a nature to return or promise remuneration in excess of the weekly benefit amounts he would have received if otherwise unemployed over this period of time;

(c) no claimant shall be eligible to receive benefits or waiting period credit following the completion of a temporary work assignment

unless the claimant shows that he informed the temporary employment agency that provided the assignment of the assignment's completion, has maintained on-going weekly contact with the agency after completion of the assignment, and that the agency has not provided a subsequent assignment for which the claimant's prior training or experience shows him to be fitted or qualified;

(4) has been unemployed for a waiting period of one week, but a week may not be counted as a week of unemployment for the purposes of this paragraph:

(a) unless it occurs within the benefit year that included the week with respect to which he claims payment of a benefit;

(b) if a benefit has been paid with respect to it; and

(c) unless the individual was eligible for a benefit with respect to it as provided in this section and Section 41-35-120, except for the requirements of this item (4) and of item (5) of Section 41-35-120;

(5) has separated, through no fault of his own, from his most recent bona fide employer; provided, however, the term 'most recent bona fide employer' means the work or employer from which the individual separated regardless of work subsequent to his separation in which he earned less than eight times his weekly benefit amount; and

(6) participates in reemployment services, such as job search assistance services, if he is determined to be likely to exhaust regular benefits and need a reemployment service pursuant to a profiling system established by the department, unless the department determines:

(a) the individual has completed such services; or

(b) there is justifiable cause for the claimant's failure to participate in those services."

Conforming amendment

SECTION 76. Section 41-35-115 of the 1976 Code, as added by Act 21 of 1993, is amended to read:

"Section 41-35-115. Notwithstanding another provision of law, an individual otherwise eligible for a benefit may not be denied a benefit with respect to a week in which he is required by law to appear in court as a witness or juror. However, an unemployment benefit received by a person pursuant to Chapters 27 through 41 of this title must be reduced by any per diem received for service as a juror. The department must promulgate regulations necessary to implement the provisions of this section."

Disqualification for benefits when illegal drugs used; regain qualification when certain conditions satisfied

SECTION 77. Section 41-35-120 of the 1976 Code, as last amended by Act 50 of 2005, is further amended to read:

“Section 41-35-120. An insured worker is ineligible for benefits for:

(1) Leaving work voluntarily. If the department finds he left voluntarily, without good cause, his most recent work prior to filing a request for determination of insured status or a request for initiation of a claim series within an established benefit year, with ineligibility beginning with the effective date of the request and continuing until he has secured employment and shows to the satisfaction of the department that he has performed services in employment as defined by Chapters 27 through 41 of this title and earned wages for those services equal to at least eight times the weekly benefit amount of his claim.

(2) Discharge for cause connected with the employment. If the department finds that he has been discharged for cause connected with his most recent work prior to filing a request for determination of insured status or a request for initiation of a claim series within an established benefit year, with ineligibility beginning with the effective date of the request, and continuing not less than five nor more than the next twenty-six weeks, in addition to the waiting period, with a corresponding and mandatory reduction of the insured worker's benefits to be calculated by multiplying his weekly benefit amount by the number of weeks of his disqualification. The ineligibility period must be determined by the department in each case according to the seriousness of the cause for discharge. A charge of discharge for cause connected with the employment may not be made for failure to meet production requirements unless the failure is occasioned by wilful failure or neglect of duty. ‘Cause connected with the employment’ as used in this item requires more than a failure in good performance of the employee as the result of inability or incapacity.

(3)(a) Discharge for illegal drug use, and is ineligible for benefits beginning with the effective date of the request and continuing until he has secured employment and shows to the satisfaction of the department that he has performed services in employment as defined by Chapters 27 through 41 of this title and earned wages for those services equal to at least eight times the weekly benefit amount of his claim if the:

(i) company has communicated a policy prohibiting the illegal use of drugs, the violation of which may result in termination; and

(ii) insured worker fails or refuses to provide a specimen pursuant to a request from the employer, or otherwise fails or refuses to cooperate by providing an adulterated specimen; or

(iii) insured worker provides a blood, hair, or urine specimen during a drug test administered on behalf of the employer, which tests positive for illegal drugs or legal drugs used unlawfully, provided:

(A) the sample was collected and labeled by a licensed health care professional or another individual authorized to collect and label test samples by federal or state law, including law enforcement personnel; and

(B) the test was performed by a laboratory certified by the National Institute on Drug Abuse, the College of American Pathologists or the State Law Enforcement Division; and

(C) an initial positive test was confirmed on the specimen using the gas chromatography/mass spectrometry method, or an equivalent or a more accurate scientifically accepted method approved by the National Institute on Drug Abuse;

(iv) for purposes of this item, 'unlawfully' means without a prescription.

(b) If an insured worker makes an admission pursuant to the employer's policy, which provides that voluntary admissions made before the employer's request to the employee to submit to testing may protect an employee from immediate termination, then the admission is inadmissible for purposes of this section as long as the:

(i) employer has communicated a written policy, which provides protection from immediate termination for employees who voluntarily admit prohibited drug use before the employer's request to submit to a test; and

(ii) employee makes the admission specifically pursuant to the employer's policy.

(c) Information, interviews, reports, and drug-test results, written or otherwise, received by an employer through a drug-testing program may be used or received in evidence in proceedings conducted pursuant to the provisions of this title for the purposes of determining eligibility for unemployment compensation, including administrative or judicial appeal.

(4) Discharge for gross misconduct, and is ineligible for benefits beginning with the effective date of the request and continuing until he has secured employment and shows to the satisfaction of the department that he has performed services in employment as defined by Chapters 27 through 41 of this title and earned wages for those services equal to at least eight times the weekly benefit amount of his claim if he is discharged due to:

(i) wilful or reckless employee damage to employer property that results in damage of more than fifty dollars;

(ii) employee consumption of alcohol or being under the influence of alcohol on employer property in violation of a written company policy restricting or prohibiting consumption of alcohol;

(iii) employee theft of items valued at more than fifty dollars;

(iv) failure to comply with applicable state or federal drug and alcohol testing and use regulations including, but not limited to, 49 C.F.R. part 40 and part 382 of the federal motor carrier safety regulations, while on the job or on duty, and regulations applicable for employees performing transportation and other safety sensitive job functions as defined by the federal government;

(v) employee committing criminal assault or battery of another employee or a customer;

(vi) employee committing criminal abuse of patient or child in his professional care;

(vii) employee insubordination, which is defined as wilful failure to comply with a lawful, reasonable order of a supervisor directly related to the employee's employment as described in an applicable written job description; or

(viii) employee wilful neglect of duty directly related to the employee's employment as described in an applicable written job description.

(5) Failure to accept work.

(a) If the department finds he has failed, without good cause:

(i) (A) either to apply for available suitable work, when so directed by the employment office or the department;

(B) to accept available suitable work when offered to him by the employment office or an employer; or

(C) to return to his customary self-employment, if any, when so directed by the department, the ineligibility begins with the week the failure occurred and continues until he has secured employment and shows to the satisfaction of the department that he has performed services in employment as defined in Chapters 27 through 41 of this title and earned wages for services equal to at least eight times the weekly benefit amount of his claim.

(b) In determining whether work is suitable for an individual, the department must consider, based on a standard of reasonableness as it relates to the particular individual concerned, the degree of risk involved to his health, safety, and morals, his physical fitness and prior training, his experience and prior earnings, his length of unemployment and prospects for securing local work in his customary occupation, and the distance of the available work from his residence.

(c) Notwithstanding another provision of Chapters 27 through 41 of this title, work is not considered suitable and benefits may not be denied under these chapters to an otherwise eligible individual for refusing to accept new work under any of the following conditions:

(i) if the position offered is vacant due directly to a strike, lockout, or other labor dispute;

(ii) if the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality; or

(iii) if, as a condition of being employed, the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization.

(d) Notwithstanding another provision of Chapters 27 through 41 of this title, an otherwise eligible individual may not be denied a benefit for a week for failure to apply for, or refusal to accept, suitable work because he is in training with the approval of the department.

(e) Notwithstanding another provision of this chapter, an otherwise eligible individual may not be denied a benefit for a week because he is in training approved under Section 236(a)(1) of the Trade Act of 1974, nor may the individual be denied benefits by reason of leaving work to enter training, if the work left is not suitable employment, or because of the application to a week in training of provisions in this law or an applicable federal unemployment compensation law, relating to availability for work, active search for work, or refusal to accept work. For purposes of this subitem, 'suitable employment' means, with respect to an individual, work of a substantially equal or higher skill level than the individual's past adversely affected employment, as defined for purposes of the Trade Act of 1974, and wages for the work at not less than eighty percent of the individual's average weekly wage as determined for the purposes of the Trade Act of 1974.

(6) Labor dispute. For a week in which the department finds that his total or partial unemployment is directly due to a labor dispute in active progress in the factory, establishment, or other premises at which he was last employed. This paragraph does not apply if it is shown to the satisfaction of the department that he:

(a) is not participating in, financing, or directly interested in the labor dispute;

(b) does not belong to a grade or class of workers of which, immediately before he became unemployed by reason of the dispute, there were members employed at the premises at which the dispute exists, any of whom are participating in or directly interested in the dispute. If separate branches of work, which are commonly conducted

as separate businesses in separate premises, are conducted in separate departments of the same premises, each department for the purpose of this item is considered to be a separate factory, establishment, or other premises.

(7) Receiving benefits elsewhere. For a week in which, or a part of which, he has received or is seeking unemployment benefits under an unemployment compensation law of another state or of the United States. If the appropriate agency of the other state or of the United States finally determines that he is not entitled to unemployment benefits, this disqualification does not apply.

(8) Voluntary retirement. If the department finds that he voluntarily retired from his most recent work with the ineligibility beginning with the effective date of his claim and continuing for the duration of his unemployment and until the individual submits satisfactory evidence of having had new employment and of having earned wages of not less than eight times his weekly benefit amount as defined in Section 41-35-40. For the purpose of this section, 'most recent work' means the work from which the individual retired regardless of any work subsequent to his retirement in which he earned less than eight times his weekly benefit amount."

Conforming amendment

SECTION 78. Section 41-35-125 of the 1976 Code, as added by Act 50 of 2005, is amended to read:

"Section 41-35-125. (A) Notwithstanding the provisions of Section 41-35-120, an individual is eligible for waiting week credit and for unemployment compensation if the department finds that the individual has left work voluntarily or has been discharged because of circumstances directly resulting from domestic abuse and:

- (1) reasonably fears future domestic abuse at or en route to the workplace;
- (2) needs to relocate to avoid future domestic abuse; or
- (3) reasonably believes that leaving work is necessary for his safety or the safety of his family.

(B) When determining if an individual has experienced domestic abuse for the purpose of receiving unemployment compensation, the department must require him to provide documentation of domestic abuse including, but not limited to, police or court records or other documentation of abuse from a shelter worker, attorney, member of the clergy, or medical or other professional from whom the individual has sought assistance.

(C) Documentation or evidence of domestic abuse acquired by the department pursuant to this section must be kept confidential unless consent for disclosure is given, in writing, by the individual.”

Conforming amendment

SECTION 79. Section 41-35-126 of the 1976 Code, as added by Act 67 of 2007, is amended to read:

“Section 41-35-126. Notwithstanding the provisions of Section 41-35-120, an individual is eligible for waiting week credit and for unemployment compensation if the department finds that the individual has left work voluntarily to relocate because of the transfer of a spouse who has been reassigned from one military assignment to another, provided that the separation from employment occurs within fifteen days of the scheduled relocation date.”

Conforming amendment

SECTION 80. Section 41-35-130 of the 1976 Code, as last amended by Act 67 of 2007, is further amended to read:

“Section 41-35-130. (A) A benefit paid to a claimant for unemployment immediately after the expiration of disqualification for:

- (1) voluntarily leaving his most recent work without good cause;
- (2) discharge from his most recent work for misconduct; or
- (3) refusal of suitable work without good cause must not be charged to the account of an employer.

(B) A benefit paid to a claimant must not be charged against the account of an employer by reason of the provisions of this subsection if the department determines under Section 41-35-120 that the individual:

- (1) voluntarily left his most recent employment with that employer without good cause;
- (2) was discharged from his most recent employment with that employer for misconduct connected with his work; or
- (3) subsequent to his most recent employment refused without good cause to accept an offer of suitable work made by that employer if the employer furnishes the department with those notices regarding the separation of the individual from work or the refusal of the individual to accept an offer of work as are required by the law and regulations of the department.

(C) If a benefit is paid pursuant to a decision that is finally reversed in subsequent proceedings with respect to it, an employer's account must not be charged with a benefit paid.

(D) A benefit paid to a claimant for a week in which he is in training with the approval of the department must not be charged to an employer.

(E) The provisions of subsections (A) through (D), all inclusive, with respect to the noncharging of benefits paid must be applicable only to an employer subject to the payment of contributions.

(F) A benefit paid to a claimant during an extended benefit period, as defined in Article 3, Chapter 35, must not be charged to an employer; except that a nonprofit organization electing to become liable for payments in lieu of contributions in accordance with Section 41-31-620 must reimburse fifty percent of extended benefits attributable to services performed in its employ and that after January 1, 1979, the State or a political subdivision or instrumentality of it as defined in Section 41-27-230(2)(b) electing to become liable for payment in lieu of contributions in accordance with Section 41-31-620 must reimburse all extended benefits attributable to services performed in its employ.

(G) A nonprofit organization that elects to make a payment in lieu of a contribution to the unemployment compensation fund as provided in Section 41-31-620(2) or Section 41-31-810 is not liable to make those payments with respect to the benefits paid to an individual whose base period wages include wages for previously uncovered services as defined in Section 41-35-65 to the extent that the unemployment compensation fund is reimbursed for those benefits pursuant to Section 121 of P.L. 94-566.

(H) A benefit paid to an individual whose base period wages include wages for previously uncovered services as defined in Section 41-35-65 must not be charged against the account of an employer to the extent that the unemployment compensation fund is reimbursed for those benefits pursuant to Section 121 of P.L. 94-566.

(I) A benefit paid to an individual pursuant to Section 41-35-125 must not be charged to the account of a contributing employer.

(J) A benefit paid to an individual pursuant to Section 41-35-126 must not be charged to the account of a contributing employer."

Conforming amendment

SECTION 81. Section 41-35-140 of the 1976 Code is amended to read:

“Section 41-35-140. (A) The department may require an individual filing a new claim for unemployment compensation to disclose, at the time of filing the claim, whether or not he owes child support obligations as defined under subsection (G), or, pursuant to an agreement between the department and the state or local child support enforcement agency, the state or local child support enforcement agency must notify the department whether a particular individual who has filed a new or continued claim for unemployment compensation, at the time of filing the claim, owes child support obligations, or if the state or local child support enforcement agency advises the department that the individual owes child support obligations and the individual is determined to be eligible for unemployment compensation, the department must notify the state or local child support enforcement agency enforcing the obligations that the individual has been determined to be eligible for unemployment compensation.

(B) The department must deduct and withhold from unemployment compensation payable to an individual who owes a child support obligation as defined under subsection (G):

(1) the amount specified by the individual to the department to be deducted and withheld under this section, if neither (2) nor (3) of this subsection (B) is applicable;

(2) the amount, if any, determined pursuant to an agreement submitted to the department under Section 454 (20)(B)(i) of the Social Security Act by the state or local child support enforcement agency unless item (3) is applicable; or

(3) An amount otherwise required to be deducted and withheld from unemployment compensation pursuant to legal process, as that term is defined in Section 462(e) of the Social Security Act properly served upon the department.

(C) An amount deducted and withheld under subsection (B) must be paid by the department to the appropriate state or local child support enforcement agency.

(D) An amount deducted and withheld under subsection (B) must be treated as if it were paid to the individual as unemployment compensation and paid by the individual to the state or local child support enforcement agency in satisfaction of the individual's child support obligation.

(E) For the purposes of subsections (A) through (D), the term ‘unemployment compensation’ means compensation payable under this act, including amounts payable by the department pursuant to an agreement under federal law providing for compensation, assistance, or allowances concerning unemployment.

(F) This section applies only if appropriate arrangements have been made for reimbursement by the state or local child support enforcement agency for the administrative costs incurred by the department under this section which are by the state or local child support enforcement agency.

(G) The term ‘child support obligation’ means for purposes of these provisions, attributable to a child support obligation enforced pursuant to a plan described in Section 454 of the Social Security Act and approved by the Secretary of Health and Human Services under Part D of Title IV of the Social Security Act.

(H) The term ‘state or local child support enforcement agency’ as used in these provisions means an agency of this State or a political subdivision of this State operating pursuant to a plan described in subsection (G).

(I) This section is effective for weeks commencing on or after October 1, 1982.”

Conforming amendment

SECTION 82. Section 41-35-330 of the 1976 Code is amended to read:

“Section 41-35-330. (A) There is a ‘state ‘on’ indicator’ for this State for a week if the department determines, pursuant to the regulations of the United States Secretary of Labor, that for the period consisting of that week and the immediately preceding twelve weeks the rate of insured unemployment, not seasonally adjusted, under Chapters 27 through 41 of this title:

(1) equaled or exceeded one hundred twenty percent of the average of those rates for the corresponding thirteen week period ending in each of the preceding two calendar years; and

(2) equaled or exceeded five percent. With respect to benefits for weeks of unemployment beginning after July 1, 1977, the determination of whether there has been a ‘state ‘on’ or ‘off’ indicator’ for this State beginning or ending an extended benefit period must be made under this section as if:

(a) subsection (A) did not contain item (1); and

(b) the word ‘five’ contained in item (2) of this subsection were ‘six’ except that, notwithstanding a provision of this section, a week for which there would otherwise be a ‘state ‘on’ indicator’ for this State must continue to be such a week and must not be determined to be a week for which there is a ‘state ‘off’ indicator’ for this State.

(B) There is a 'state 'off' indicator' for this State for a week if, for the period consisting of that week and the immediately preceding twelve weeks, either items (1) or (2) of subsection (A) are not satisfied.

(C) This section applies to weeks beginning after September 25, 1982.”

Conforming amendment

SECTION 83. Section 41-35-340 of the 1976 Code is amended to read:

“Section 41-35-340. For purposes of Section 41-35-330 ‘rate of insured unemployment’ means the percentage derived by dividing the:

(1) average weekly number of individuals filing claims for regular state compensation in this State for weeks of unemployment with respect to the most recent thirteen consecutive week period, as determined by the department on the basis of its reports to the United States Secretary of Labor, by

(2) average monthly employment covered under Chapters 27 through 41 of this title for the first four of the most recent six completed calendar quarters ending before the end of this thirteen-week period.”

Conforming amendment

SECTION 84. Section 41-35-410 of the 1976 Code is amended to read:

“Section 41-35-410. Except when the result would be inconsistent with the other provisions of this section, as provided in the regulations of the department, the provisions of Chapters 27 through 41 of this title which apply to claims for, or the payment of, regular benefits must apply to claims for, and the payment of, extended benefits.”

Conforming amendment

SECTION 85. Section 41-35-420 of the 1976 Code, as last amended by Act 125 of 1993, is further amended to read:

“Section 41-35-420. (A) An individual is eligible to receive extended benefits with respect to any week of unemployment in his eligibility period only if the department finds that with respect to that week:

(1) He is an 'exhaustee' as defined in Section 41-35-390.

(2) He has satisfied the requirements of Chapters 27 through 41 of this title for the receipt of regular benefits that are applicable to individuals claiming extended benefits, including not being subject to a disqualification for the receipt of benefits.

(3) Except as provided in item (4), an individual must not be eligible for extended benefits for a week if:

(a) extended benefits are payable for that week pursuant to an interstate claim filed in a state under the interstate benefit payment plan; and

(b) no extended benefit period is in effect for that week in the State.

(4) Item (3) of subsection (A) does not apply with respect to the first two weeks for which extended benefits are payable, determined without regard to this subsection, pursuant to an interstate claim filed under the interstate benefit payment plan to the individual with respect to the benefit year.

(B)(1) Notwithstanding the provisions of Sections 41-35-410 and 41-35-420, effective for weeks beginning after March 31, 1981, an individual is disqualified from receipt of extended benefits if the department finds that during any week of his eligibility period he has failed either to apply for, or to accept an offer of, suitable work, as defined under item (4) of this subsection, to which he was referred by the department.

(2) Notwithstanding the provisions of Sections 41-35-410 and 41-35-420, effective for weeks beginning after March 31, 1981, an individual is disqualified from receipt of extended benefits if the department finds that during any week of his eligibility period he has failed to furnish evidence that he has actively engaged in a systematic and sustained effort to find work.

(3) This disqualification begins with the week in which the failure occurred and continues until he has been employed in each of four subsequent weeks, whether or not consecutive, and has earned remuneration equal to not less than four times his weekly extended benefit amount.

(4) For the purposes of this subsection, the term 'suitable work' means work within the individual's capabilities to perform if:

(a) the gross average weekly remuneration payable for the work exceeds the sum of the individual's weekly extended benefit amount plus the amount, if any, of supplemental unemployment benefits, as defined in Section 501(c)(17)(D) of the Internal Revenue Code of 1954, payable to the individual for that week;

(b) the wages payable for the work equal the higher of the minimum wages provided by Section 6(a)(1) of the Fair Labor Standards Act of 1938, without regard to an exemption, or the state or local minimum wage;

(c) the position was offered to the individual in writing or was listed with the State Employment Service;

(d) the work otherwise meets the definition of 'suitable work' for regular benefits contained in subsection (5)(b) of Section 41-35-120 to the extent that the criteria of suitability are not inconsistent with the provisions of this item; and

(e) the individual cannot furnish satisfactory evidence to the department that his prospects for obtaining work in his customary occupation within a reasonably short period of time are good. If the evidence is deemed satisfactory for this purpose, the determination of whether any work is suitable with respect to the individual must be made pursuant to the definition of suitable work contained in Section 41-35-120 without regard to the definition specified by this item (4).

(C) Notwithstanding a provision of item (d) of this subsection to the contrary, work may not be considered suitable for an individual if it is not consistent with Section 41-35-120(5)(b).

(D) For the purposes of item (2) of subsection (B), an individual must be treated as actively engaged in seeking work during a week if the individual:

(1) has engaged in a systematic and sustained effort to obtain work during the week;

(2) furnishes tangible evidence that he has engaged in an effort during the week.

(E) The Employment Service must refer any claimant entitled to extended benefits under this chapter to any suitable work that meets the criteria prescribed in item (4) of subsection (B).

(F) An individual must not be eligible to receive an extended benefit with respect to a week of unemployment in his eligibility period if he has been disqualified for regular or extended benefits under the chapter because he voluntarily left work, was discharged for cause, or failed to accept an offer of or apply for suitable work unless the disqualification imposed for these reasons has been terminated pursuant to specific conditions established under the South Carolina Employment Security Law requiring the individual to perform service for remuneration subsequent to the date of the disqualification.

If the disqualification imposed did not require the individual to perform service for remuneration subsequent to the date of the disqualification, the individual is ineligible for an extended benefit beginning with the effective date of the request for initiation of an

extended benefit claim series and continuing until he secures employment and shows to the department's satisfaction that he has worked in each of at least four different weeks, whether or not those weeks are consecutive, and earned wages equal to at least four times the weekly benefit amount of his claim."

Conforming amendment

SECTION 86. Section 41-35-450 of the 1976 Code is amended to read:

"Section 41-35-450. When an extended benefit period is to become effective in this State as a result of a 'state 'on' indicator', or an extended benefit period is to be terminated in this State as a result of a 'state 'off' indicator', the department must make an appropriate public announcement. A computation required by the provisions of Section 41-35-340 must be made by the department pursuant to regulations prescribed by the United States Secretary of Labor."

Conforming amendment

SECTION 87. Section 41-35-610 of the 1976 Code is amended to read:

"Section 41-35-610. A request for determination of insured status, a request for initiation of a claim series in a benefit year, a notice of unemployment, a certification for waiting-week credit, and a claim for benefits must be made pursuant to regulations the department promulgates. An employer must post and maintain in places readily accessible to individuals in his service printed statements concerning regulations or related matters the department prescribes by regulation. An employer must supply those individuals copies of the printed statements or materials the department prescribes by regulation. These statements or materials must be supplied by the department to an employer without cost to the employer."

Conforming amendment

SECTION 88. Section 41-35-630 of the 1976 Code is amended to read:

"Section 41-35-630. (A) In a case where the payment or denial of a benefit will be determined by the provisions of Section 41-35-120(6),

the department must designate a special examiner to make an initial determination with respect to it. The determination of the examiner may be appealed in the same manner, within the same time, and through the same procedures as any other determination. The department may, upon written request by a group of workers or their authorized representative, allow one of a group representing a grade or class of workers similarly situated to file an appeal known as a 'Group Test Appeal', and the decision of the appeal tribunal or the department regarding the disqualification of the group representative because of the application of Section 41-35-120(6) is binding on the entire group.

(B) When a determination involves multiple claimants and difficult issues of fact or law, the department may designate a special examiner to render the determination. A determination, which may be appealed in the same manner, within the same time, and through the same procedures as any other determination. The department must allow a claimant affected by this determination to join in one appeal and the decision of the appeal tribunal or the department is binding on all claimants who are parties to the consolidated appeal.”

Conforming amendment

SECTION 89. Section 41-35-640 of the 1976 Code, as last amended by Act 203 of 2002, is further amended to read:

“Section 41-35-640. (A) An initial determination may for good cause be reconsidered. A party entitled to notice of an initial determination may apply for a reconsideration not later than ten days after the determination was mailed to his last known address. Notice of the redetermination must be promptly given in the manner prescribed in this article with respect to notice of an initial determination.

(B) An initial determination must be reconsidered when the department finds an error in computation or of a similar character has occurred in connection with it or that wages of the claimant pertinent to the determination, but not considered in connection with it, have been newly discovered. However, this redetermination must not be made after one year from the date of the original determination. The reconsidered determination supersedes the original determination. Notice of this redetermination promptly must be given in the manner prescribed in this article with respect to notice of an original determination. Subject to the same limitations and for the same reasons, the department may reconsider a determination in a case where a final decision is rendered by an appeal tribunal, the department, or a court, and, after notice to and the expiration of the period for appeal by

the persons entitled to notice of the final decision, may apply to the body or court that rendered the final decision and seek a revised decision. In the event that an appeal involving an original determination is pending on the date a redetermination is issued, the appeal, unless withdrawn, must be treated as an appeal from the redetermination.”

Conforming amendment

SECTION 90. Section 41-35-670 of the 1976 Code is amended to read:

“Section 41-35-670. (A) Notwithstanding another provision contained in this article, benefits must be paid pursuant to a determination, redetermination, or the decision of an appeal tribunal, the department, or a reviewing court upon the issuance of that determination, redetermination, or decision, regardless of the pendency of the period to apply for reconsideration, file an appeal, or petition for judicial review provided with respect to it or the pendency of such an application, filing, or petition, until the determination, redetermination, or decision has been modified or reversed by a subsequent redetermination or decision, in which event benefits must be paid or denied for weeks of unemployment afterward pursuant to the modifying or reversing redetermination or decision.

(B) If a determination or redetermination allowing a benefit is affirmed by the appeal tribunal or the department, or if a decision of an appeal tribunal allowing a benefit is affirmed by the department, those benefits must be paid promptly regardless of a further appeal that may be taken, and no injunction, supersedeas, stay, or other writ or process suspending the payment of the benefits must be issued by a court.”

Conforming amendment

SECTION 91. Section 41-35-680 of the 1976 Code, as last amended by Act 203 of 2002, is further amended to read:

“Section 41-35-680. Unless an appeal is withdrawn, an appeal tribunal, after affording the parties reasonable opportunity for a fair hearing, after notice of not less than seven days, must make findings and conclusions promptly and on the basis of the findings and conclusions affirm, modify, or reverse the determination or redetermination within thirty days from the date of the hearing. Each party promptly must be furnished a copy of the decision, including the

reasons for the decision. This must be considered the final decision of the department, unless within ten days after the date of mailing the decision a further appeal is initiated pursuant to Section 41-35-710.”

Conforming amendment

SECTION 92. Section 41-35-690 of the 1976 Code is amended to read:

“Section 41-35-690. The procedure provided in this chapter for appeals from a determination or redetermination to the appeal tribunal and for appeals from the tribunal, first to the Workforce Department Appellate Panel, as established by Section 41-29-300, and afterward to the administrative law court, pursuant to Section 41-29-300(C)(1), is the sole and exclusive appeal procedure.”

Conforming amendment

SECTION 93. Section 41-35-700 of the 1976 Code is amended to read:

“Section 41-35-700. (A) To hear and decide appeal claims, the executive director must appoint one or more impartial appeal tribunals consisting of either:

- (1) a referee, selected pursuant to Section 41-29-70; or
- (2) a body consisting of three members, one of whom:
 - (a) must be a referee who must serve as chairman;
 - (b) one of whom must be a representative of employers; and
 - (c) the third of whom must be a representative of employees.

(B) Each of the latter two members shall serve at the pleasure of the executive director and shall be paid a per diem as fixed in the annual state appropriation act for boards, commissions, and committees for each day of active service on a tribunal plus necessary expenses, as fixed in the annual appropriation act. A person must not participate on behalf of the department in any case in which he is an interested party. The department may designate alternates to serve in the absence or disqualification of a member of an appeal tribunal. The chairman must act alone in the absence or disqualification of another member and his alternate. The hearings must not proceed unless the chairman of the appeal tribunal is present.”

Conduct of appealed claims; department to promulgate procedures by regulation

SECTION 94. Section 41-35-710 of the 1976 Code is amended to read:

“Section 41-35-710. The Workforce Department Appellate Panel may on its own motion affirm, modify, or set aside a decision of an appeal tribunal on the basis of evidence previously submitted in the case; direct the taking of additional evidence; or permit a party to the decision to initiate further appeals before it. The appellate panel must permit further appeals by a party to a decision of an appeal tribunal and by the examiner whose decision has been overruled or modified by an appeal tribunal. The appellate panel may remove to itself or transfer to another appeal tribunal the proceedings on a claim pending before an appeal tribunal. Proceedings removed to the appellate panel must be heard by a quorum pursuant to the requirements of Sections 41-35-690 and 41-35-720. The appellate panel promptly must notify a party to a proceeding of its findings and decision.”

Conforming amendment

SECTION 95. Section 41-35-720 of the 1976 Code is amended to read:

“Section 41-35-720. The department must promulgate regulations establishing rules of procedure for proceedings, hearings, and appeals to the appellate panel and the appeal tribunals pursuant to Section 41-35-790. The rules of procedure must address the manner for determining the rights of each party to an appeal. The rules of procedure are not required to conform to common law or statutory rules of evidence and other technical rules of procedure. A full and complete record must be kept of all proceedings in connection with an appealed claim. Testimony at a hearing before an appeals tribunal on an appealed claim must be recorded but must not be transcribed unless the claim is appealed to the appellate panel.”

Conforming amendment

SECTION 96. Section 41-35-730 of the 1976 Code is amended to read:

“Section 41-35-730. Witnesses subpoenaed pursuant to this article must be allowed fees and mileage at a rate fixed by the department, which must not exceed that allowed for witnesses by the administrative law court. These fees must be considered a part of the expense of administering Chapters 27 through 41 of this title.”

Conforming amendment

SECTION 97. Section 41-35-740 of the 1976 Code is amended to read:

“Section 41-35-740. A decision of the department, in the absence of an appeal from it as provided in this article, becomes final ten days after the date of notification or mailing of it, and judicial review is permitted only after a party claiming to be aggrieved by it has exhausted his administrative remedies as provided by Chapters 27 through 41 of this title. The department must be considered to be a party to a judicial action involving a decision and may be represented in the judicial action by a qualified attorney employed by the department and designated by the department for that purpose or, at the department’s request, by the Attorney General.”

Department to promulgate regulations governing certain proceedings

SECTION 98. Section 41-35-750 of the 1976 Code, as last amended by Act 387 of 2006, is further amended to read:

“Section 41-35-750. Within thirty days from the date of mailing the department’s decision, a party to the proceeding whose benefit rights or whose employer account may be affected by the department’s decision may initiate an action in the administrative law court against the department for the review of its decision, in which action every other party to the proceeding before the department must be made a defendant. In this action a petition, which need not be verified but which must state the grounds on which a review is sought, must be served on the executive director or on a person designated by the department within the time specified by this section. Service is considered complete service on all parties, but there must be left with the person served as many copies of the petition as there are defendants, and the department promptly shall mail one copy to each defendant. With its answer the department must certify and file with the court all documents and papers and a transcript of all testimony

taken in the matter and its findings of fact and decision. The department also may certify to the court questions of law involved in a decision by the department. In a judicial proceeding under this chapter, the findings of the department regarding facts, if supported by evidence and in the absence of fraud, must be conclusive and the jurisdiction of the administrative law court must be confined to questions of law. These actions, and the questions so certified, must be heard in a summary manner and must be given precedence over other cases. An appeal may be taken from the decision of the administrative law court pursuant to the South Carolina Appellate Court Rules and Section 1-23-610. It is not necessary in a judicial proceeding under this article to enter exceptions to the rulings of the department, and no bond is required for entering the appeal. Upon the final determination of the judicial proceeding, the department must enter an order in accordance with the determination. A petition for judicial review must not act as a supersedeas or stay unless the department orders a supersedeas or stay.”

Conforming amendment

SECTION 99. Chapter 35, Title 41 of the 1976 Code is amended by adding:

“Section 41-35-760. (A) The department must promulgate all regulations described in this chapter and regulations governing procedures at all proceedings, hearings, and appeals before the department or any member or employee of the department, including claims for benefit determinations, and all appeals of determinations regarding those claims, and publish all regulations on an electronic website.

(B) Regulations governing procedures at hearings and appeals before the department shall include, at a minimum:

- (1) procedures for seeking a hearing, review, or appeal;
- (2) procedures for notifying parties;
- (3) evidentiary rules;
- (4) procedures for making findings of fact and conclusions of law;
- (5) procedures for making and maintaining an appropriate record of interviews and proceedings before the department; and
- (6) procedures for seeking review or appeal of the department’s decision.

(C) All regulations must be promulgated in accordance with the provisions of Chapter 23, Title 1 of the South Carolina Code of Laws.”

Conforming amendment

SECTION 100. Section 41-37-20 of the 1976 Code is amended to read:

“Section 41-37-20. (A) An employing unit not otherwise subject to Chapters 27 through 41 of this title, which files with the department its written election to become an employer subject to these chapters for not less than two calendar years, with the written approval of the election by the department, must become an employer subject to the same extent as all other employers as of the date stated in the approval and must cease to be subject to these chapters as of January first of a calendar year subsequent to the two calendar years if by the thirtieth day of April of that year it has filed with the department a written notice to that effect.

(B) An employing unit, for which services that do not constitute employment as defined in Chapters 27 through 41 of this title are performed, may file with the department a written election that services performed by an individual in its employment in one or more distinct establishments or places of business must be considered to constitute employment by an employer for the purposes of those chapters for not less than two calendar years. On the written approval of this election by the department, these services must be considered to constitute employment subject to those chapters from and after the date stated in the approval. These services cease to be considered employment subject to these chapters as of January first of a calendar year subsequent to those two calendar years if by the thirtieth day of April of that year the employing unit files with the department a written notice to that effect.”

Conforming amendment

SECTION 101. Section 41-37-30 of the 1976 Code is amended to read:

“Section 41-37-30. Except as otherwise provided in Section 41-37-20:

(A) As of January 1, 1972, an employing unit must cease to be an employer subject to Chapters 27 through 41 of this title only if it files with the department by the thirtieth day of April of that year an application for termination of coverage and the department finds that there were no twenty different weeks within the preceding calendar

year within which the employing unit had four or more individuals in employment subject to these chapters.

(B) As of January 1, 1973, an employing unit shall cease to be an employer subject to Chapters 27 through 41 of this title only if it files with the department by the thirtieth day of April of a calendar year an application for termination of coverage and the department finds that there were no twenty different weeks within the preceding calendar year within which the employing unit had at least one individual in employment subject to these chapters and that there was no calendar quarter within the preceding calendar year in which the employing unit paid fifteen hundred dollars or more in wages for service in employment, except that no employing unit for which service is performed in employment as defined in Section 41-27-230(3) may cease to be an employer subject to Chapters 27 through 41 of this title unless it files with the department by the thirtieth day of April of any calendar year an application for termination of coverage and the department finds that there were not twenty different weeks within the preceding calendar year within each of which the employing unit had four or more persons in employment.

(C) As of January 1, 1979, an employing unit, as defined in Section 41-27-230(5), must cease to be an employer subject to Chapters 27 through 41 of this title only if it files with the department by the thirtieth day of April of a calendar year an application for termination of coverage and the department finds that there were not twenty different weeks within the preceding calendar year within which the employing unit had at least ten individuals in employment subject to Chapters 27 through 41 of this title and that there was no calendar quarter within the preceding calendar year in which the employing unit paid twenty thousand dollars or more in wages for service in employment.

(D) As of January 1, 1979, an employing unit, as defined in Section 41-27-230(6), must cease to be an employer subject to Chapters 27 through 41 of this title only if it files with the department by the thirtieth day of April of a calendar year an application for termination of coverage and the department finds that there was no calendar quarter within the preceding calendar year in which the employing unit paid one thousand dollars or more in wages for service in employment.

(E) An employer who has rendered no employment and paid no wages in the State for a continuous period of one calendar year may submit an application for termination of coverage upon the resumption of employment in the State. However, when a successor employer acquired substantially all of the business of a predecessor employer and the experience rating reserve of the predecessor is transferred to the

successor, the liability of the predecessor may be terminated at the end of the calendar year during which this succession occurred, provided that the predecessor did not within the calendar year subsequent to the date of succession render employment or pay wages sufficient to remain an employer as defined in Section 41-27-210.

(F) The provisions of this section must not be applicable to an employing unit for a service performed in employment as defined by Section 41-27-230(2).

For the purpose of this section, the two or more employing units mentioned in items (3) and (4) of Section 41-27-210 must be treated as a single employing unit.”

Conforming amendment

SECTION 102. Section 41-39-30 of the 1976 Code is amended to read:

“Section 41-39-30. An individual claiming benefits may not be charged a fee in a proceeding under Chapters 27 through 41 of this title by the department or its representatives or by a court or an officer, except an attorney, of it. An individual claiming a benefit in a proceeding before the department or a court must be represented by an attorney or other duly authorized agent, but an attorney or agent must not charge or receive for this service more than an amount approved by the department. A person who violates a provision of this section, for each offense, must be fined not less than fifty dollars nor more than five hundred dollars, imprisoned for not more than six months, or both.”

Conforming amendment

SECTION 103. Section 41-39-40 of the 1976 Code, as added by Act 306 of 1996, is amended to read:

“Section 41-39-40. (A) As of January 1, 1997, an individual filing an initial claim for unemployment compensation must be advised at the time of the filing of the claim that:

- (1) unemployment compensation is subject to federal and state income taxation;
- (2) requirements exist pertaining to estimated tax payments;
- (3) the individual may elect to have federal income tax deducted and withheld from the individual’s payment of unemployment

compensation at the rate specified in the Internal Revenue Code of 1986;

(4) the individual may elect to have South Carolina state income tax deducted and withheld from the individual's payment of unemployment compensation at the rate of seven percent;

(5) the individual is permitted to change a previously elected withholding of income tax at least once.

(B) Amounts deducted and withheld from unemployment compensation must remain in the Unemployment Trust Fund until transferred to the federal or state taxing authority as a payment of income tax. The date of transfer to the South Carolina Department of Revenue must be the same date as the transfer to the Internal Revenue Service.

(C) The department shall follow all procedures specified by the United States Department of Labor and the Internal Revenue Service pertaining to the deducting and withholding of income tax.

(D) Amounts must be deducted and withheld under this section only after amounts are deducted and withheld for overpayments of unemployment compensation, child support obligations, or other amount required to be deducted and withheld under this title."

Conforming amendment

SECTION 104. Section 41-41-20 of the 1976 Code, as last amended by Act 202 of 2002, is further amended to read:

"Section 41-41-20. (A) A claimant found by the department knowingly to have made a false statement or who knowingly failed to disclose a material fact when filing a compensable claim to establish his right to or increase the amount of his benefits is ineligible to receive benefits for any week for which the claim was filed and is ineligible to receive further benefits for not less than ten and not more than fifty-two consecutive weeks as determined by the department according to the circumstances of the case, these weeks to commence with the date of the determination.

(B) If the department finds that a fraudulent misrepresentation has been made by a claimant with the object of obtaining benefits under this chapter to which he was not entitled, in addition to any other penalty or prosecution provided under this chapter, the department may make a determination that there must be deducted from benefits to which the claimant might become entitled during this present benefit year or the next subsequent benefit year, or both, an amount not less than two times his weekly benefit amount and not more than his

maximum benefit amount payable in a benefit year, as determined under Chapter 35. This deduction takes effect on the date of the determination. An appeal from this determination must be made in the manner prescribed in Article 5, Chapter 35.”

Conforming amendment

SECTION 105. Section 41-41-40 of the 1976 Code, as last amended by Act 202 of 2002, is further amended to read:

“Section 41-41-40. (A)(1) A person who has received a sum as benefits under Chapters 27 through 41 while conditions for the receipt of benefits imposed by these chapters were not fulfilled or while he was disqualified from receiving benefits is liable to repay the department for the unemployment compensation fund a sum equal to the amount received by him.

(2) If full repayment of benefits, to which an individual was determined not entitled, has not been made, the sum must be deducted from future benefits payable to him under Chapters 27 through 41, and the sum must be collectible in the manner provided in Sections 41-31-380 to 41-31-400 for the collection of past due contributions.

(3) The department may attempt collection of overpayments through the South Carolina Department of Revenue in accordance with Section 12-56-10, et seq. If the overpayment is collectible in accordance with Section 12-56-60, the department shall add to the amount of the overpayment a collection fee of not more than twenty-five dollars for each collection attempt to defray administrative costs.

(4) Notwithstanding any other provision of this section, no action to enforce recovery or recoupment of any overpayment may begin after five years from the date of the final determination.

(B)(1) A person who is overpaid any amounts as benefits under Chapters 27 through 41 is liable to repay those amounts, except as otherwise provided by this subsection.

(2) Upon written request by the person submitted to the department within the statutory appeal period from the issuance of the determination of overpayment, the department may waive repayment if the department finds that the:

(a) overpayment was not due to fraud, misrepresentation, or wilful nondisclosure on the part of the person;

(b) overpayment was received without fault on the part of the person; and

(c) recovery of the overpayment from the person would be contrary to equity and good conscience.

(3) Decisions denying waiver requests are subject to the appeal provisions of Chapter 35.

(C) A person who has received a sum as benefits under the comparable unemployment law of any other state while conditions imposed by that law were not fulfilled or while he was disqualified from receiving benefits by that law is liable to repay the department for the corresponding unemployment compensation fund of the other state a sum equal to the amount received by him if the other state has entered into an Interstate Reciprocal Overpayment Recovery Agreement with the State and has furnished the department with verification of the overpayment as required by the agreement. Recovery of overpayments under this subsection are not subject to the provisions of subsections (A)(3) and (B).”

Conforming amendment

SECTION 106. Section 41-41-50 of the 1976 Code is amended to read:

“Section 41-41-50. An employing unit or person who wilfully violates a provision of Chapters 27 through 41 of this title or an order, rule, or regulation under this title, the violation of which is made unlawful or the observance of which is required under the terms of these chapters, is liable to a penalty of one thousand dollars, to be recovered by the department in an appropriate civil action in a court of competent jurisdiction, and also is guilty of a misdemeanor and, upon conviction, must be punished by a fine of not less than twenty dollars but not more than one hundred dollars or imprisonment for not longer than thirty days, and each day the violation continues is considered a separate offense.”

Conforming amendment

SECTION 107. Section 41-42-10 of the 1976 Code is amended to read:

“Section 41-42-10. The department must create a division known as the ‘South Carolina State Employment Service’ that must establish and maintain free public employment offices in a number and in places necessary for the proper administration of Chapters 27 through 42 of this title and for the purpose of performing duties within the purview of

the act of Congress, entitled ‘An Act to Provide for the Establishment of a National Employment System and for Cooperation With the States in the Promotion of Such System, and for Other Purposes’, approved June 6, 1933 (48 Stat. 113, U.S.C. Title 29, Section 49(c) as amended). All duties and powers formerly conferred on another department, agency, or officer of this State relating to the establishment, maintenance, and operation of free public employment offices are vested in this division.”

Conforming amendment

SECTION 108. Section 41-42-20 of the 1976 Code is amended to read:

“Section 41-42-20. The division must be administered by a full-time salaried director, who shall cooperate with an official or agency of the United States having powers or duties under provisions of such act of Congress and shall do and perform all things necessary to secure to this State the benefits of that act of Congress in the promotion and maintenance of a system of public employment offices. The executive director shall appoint the director and other officers and employees of the State Employment Service.”

Conforming amendment

SECTION 109. Section 41-42-30 of the 1976 Code is amended to read:

“Section 41-42-30. The provisions of the act of Congress mentioned in Section 41-42-10 are accepted by this State, in conformity with Section 4 of that act and this State will observe and comply with the requirements of the act. The department is designated and constituted the agency of this State for the purposes of that act.”

Conforming amendment

SECTION 110. Section 41-42-40 of the 1976 Code is amended to read:

“Section 41-42-40. For the purpose of establishing and maintaining free public employment offices the division may enter into agreement with a political subdivision of this State or with a private nonprofit organization and as a part of such agreement the department may

accept money, services, or quarters as a contribution to the unemployment compensation administration fund.”

Factor to consider for appointments and hires

SECTION 111. In making appointments and hiring decisions for positions pursuant to this act, the governing authority or individual tasked with making such appointment or hiring decision must consider race, gender, and other demographic factors to assure nondiscrimination, inclusion, and representation to the greatest extent possible of all segments of the population of this State; however, consideration of these factors in no way creates a cause of action or basis for an employee grievance for a person appointed or for a person who fails to be appointed.

Management audits of department’s finance and operations required of Legislative Audit Council

SECTION 112. The Legislative Audit Council shall contract for three independent management audits of the department’s finance and operations. This first audit must be completed by July 1, 2011, the second audit must be completed by July 1, 2013, and the third audit must be completed by July 1, 2018. The Legislative Audit Council may contract for follow-up audits or conduct follow-up audits as needed based upon the audit’s initial findings.

At a minimum, the audits required pursuant to this SECTION must:

- (1) provide a detailed accounting of the revenues and expenditures from the Unemployment Insurance Trust Fund since 2000;
- (2) determine the adequacy of the process for notifying state officials of the financial status of the Unemployment Insurance Trust Fund;
- (3) assess alternatives for maintaining the solvency of the Unemployment Insurance Trust Fund;
- (4) examine the unemployment eligibility benefit process for efficiency and compliance with law and agency policy; and
- (5) evaluate the effectiveness of the Department of Workforce’s programs for assisting claimants in returning to work.

The cost of these audits, including related administrative and management expenses of the Legislative Audit Council, are an operating expense of the department. The department shall pay directly to the Legislative Audit Council the cost of the audits.

**Workforce Initiative/Economic Development Research Committee;
duties, composition, reporting requirement, abolition**

SECTION 113.(A) There is created the Workforce Initiative/Economic Development Research Committee. This committee shall review, examine, and make recommendations regarding steps that should be taken to improve the economy of this State, the employment of South Carolinians, and to restore a substantially greater sense of financial security to the citizens of this State. The review must include an inventory of workforce training and recruitment programs and their adequacy toward meeting the needs of South Carolina's businesses. In addition, the review and recommendations must place emphasis on the goal of matching unemployed citizens with jobs.

(B) The twenty-five member committee is composed of:

- (1) one member appointed by the Governor;
- (2) one member appointed by the President Pro Tempore of the Senate;
- (3) one member appointed by the Speaker of the House of Representatives;
- (4) the Secretary of Commerce, or his designee;
- (5) the Director of the Department of Parks, Recreation and Tourism, or his designee;
- (6) a county economic development director from each Congressional district chosen by the economic development person or his designee from the office of the member of Congress representing each district;
- (7) the Dean of the Moore School of Business at the University of South Carolina, the Dean of the Francis Marion University School of Business, the Dean of the South Carolina State University School of Business, the Dean of the College of Charleston School of Business and Economics, the Dean of the Clemson University College of Business, and the Dean of the Winthrop University College of Business Administration;
- (8) the Chairman of the Board of Economic Advisors;
- (9) the Secretary of Agriculture, or his designee;
- (10) the Executive Director of the Department of Employment and Workforce;
- (11) the Chairman of the State Ports Authority, or his designee;
- (12) the Director of the Office of Small and Minority Business Assistance;
- (13) the President of the South Carolina Chamber of Commerce, or his designee;

(14) the President of the South Carolina Manufacturers' Alliance, or his designee; and

(15) the Executive Director of the State Board for Technical and Comprehensive Education, or his designee.

(C) The Governor shall serve as the chairperson of the committee.

(D) A vacancy occurring on the committee must be filled in the same manner as the original appointment.

(E) The staffing for the committee must be provided by the appropriate committees of the Senate and House of Representatives that oversee legislation affecting economic development and finance in this State and the staff of the Workforce Investment Program.

(F) The committee shall submit its report to the General Assembly and Governor before January 1, 2011, at which time the Workforce Initiative/Economic Development Research Committee is abolished.

Code Commissioner shall make certain conforming changes

SECTION 114. The Code Commissioner is directed to change all references in the 1976 Code to the "Department of Workforce" to the "Department of Employment and Workforce."

Notice to employer concerning certain requests; manner of notice, response requirements

SECTION 115. Chapter 35, Title 41 of the 1976 Code is amended by adding:

"Section 41-35-615. All notices given to an employer concerning a request for determination of insured status, a request for initiation of a claim series in a benefit year, a notice of unemployment, a certification for waiting-week credit, a claim for benefits, and any reconsideration of a determination must be made by United States mail or electronic mail. The employer may designate with the department its preferred method of notice. If an employer does not make a designation, then notices must be made by United States mail. The employer may not be required to respond to the notice until twelve business days after the postmark on notices sent via United States Mail or ten business days after the date a notice is sent via electronic mail."

Criminal prosecution for violations; significant fraud cases must be referred to Attorney General

SECTION 116. Section 41-27-590 of the 1976 Code is amended to read:

“Section 41-27-590. (A) All criminal actions for violation of any provision of Chapters 27 through 41 of this title or of any rules or regulations issued pursuant thereto shall be prosecuted by the Attorney General of the State or at his request and under his direction by the solicitor of any circuit or any prosecuting attorney in any court of competent jurisdiction in the county in which the employer has a place of business or the violator resides.

(B) The department must refer all cases of significant claimant and/or employer fraud to the Attorney General to determine whether to prosecute the offender.”

Examinations, Investigations, and Reports of the Department of Workforce; requirements, initiation by certain parties, timely access to information required, examination powers and requirements provided

SECTION 117. Chapter 13, Title 38 of the 1976 Code is amended by adding:

“Article 7

Examinations, Investigations, and Reports of the Department of Workforce

Section 38-13-700. (A) At least every five years, or upon request pursuant to Section 38-13-710, the director must conduct an examination of the unemployment compensation fund administered by the Department of Workforce. Examinations scheduled by the director must include at least a detailed accounting of the revenue and expenditures of the fund and an analysis of the current and future solvency of the fund.

(B) In scheduling and determining the nature, scope, and frequency of examinations, the director shall consider compliance with relevant federal and South Carolina laws and regulations, the results of previous examinations, changes in management, and reports of the audits performed by the Legislative Audit Council.

(C) For purposes of completing an examination of an insurer under this article, the director may examine or investigate the Department of Workforce in a manner considered necessary or material by the director.

Section 38-13-710. (A) An examination of the unemployment compensation fund may be initiated upon the request of either:

(1) the Chairman of the Senate Labor, Commerce and Industry Committee or the Chairman of the Senate Finance Committee and the President Pro Tempore; or

(2) the Chairman of the House of Representatives Labor, Commerce and Industry Committee or the Chairman of the House of Representatives Ways and Means Committee and the Speaker of the House of Representatives.

(B) The request must describe the issues upon which the requestor would like for the examination to focus.

(C) The director must consult with the requestors to determine the appropriate scope of the examination.

Section 38-13-720. (A) The Department of Workforce must provide timely, convenient, and free access to all books, records, accounts, papers, documents, and computer or other recordings relating to the subject of the examination. If the director considers it necessary to the conduct of the examination, he may require that the Department of Workforce furnish the original books and records. The Executive Director of the Department of Workforce shall facilitate the examination and aid in the examination.

(B) The director may issue subpoenas, administer oaths, and examine under oath a person as to matters pertinent to the examination. Upon the failure or refusal of a person to obey a subpoena, the director may petition a court of competent jurisdiction, and upon proper showing the court may enter an order compelling the witness to appear and testify or produce documentary evidence. Failure to obey the court order is punishable as contempt of court.

(C) When making an examination pursuant to this article, the director may retain attorneys, appraisers, independent actuaries, independent certified public accountants, or other professionals and specialists as examiners. The cost of the retainment must be borne by the Department of Workforce. Examination fees must be retained by the department and are considered 'other funds'.

Section 38-13-730. In addition to any other recognized and appropriate examination methodologies, when conducting an

examination, the department must utilize sample data testing to verify the accuracy of information provided by the Department of Workforce.

Section 38-13-740. The results of each examination must be compiled in a report. Examination reports must be comprised of only facts appearing on the books, records, or other documents maintained by the Department of Workforce and as ascertained from the testimony of the executive director and any other employees examined concerning the subject of the examination, and the conclusions and recommendations of the director that he finds warranted from the facts. The reports must be submitted to the General Assembly, the Review Committee, and the Governor, and made available on the Internet websites maintained by the Department of Insurance and the Department of Workforce.

Section 38-13-750. The director may not assign an examiner that has a conflict of interest.

Section 38-13-760. The Department of Workforce shall pay the charges incurred in the examination, including the expenses of the director and the expenses and compensation of his examiners and assistants.

Section 38-13-770. The director may require the Department of Workforce to answer any inquiry in relation to the administration of the unemployment compensation fund. The executive director of the Department of Workforce must promptly reply in writing.”

South Carolina Department of Workforce Review Committee created; composition, duties, powers, entitlement to certain expense reimbursements, clerical and professional support available

SECTION 118. Chapter 27, Title 41 of the 1976 Code is amended by adding:

“Article 7

South Carolina Department of Workforce Review Committee

Section 41-27-700. There is created the Department of Workforce Review Committee which must exercise the powers and fulfill the duties described in this article.

Section 41-27-710. (A) The committee must be composed of nine members, three of whom must be members of the House of Representatives appointed by the Speaker, at least one of whom must be a member of the minority party; three of whom must be members of the Senate appointed by the President Pro Tempore, at least one of whom must be a member of the minority party; and three of whom shall be appointed by the Governor from the general public at large, of which one must represent businesses with fewer than fifty employees and one of whom must represent businesses with fewer than five hundred employees. A member of the general public appointed by the Governor may not be a member of the General Assembly.

(B) The committee must meet as soon as practicable after appointment and organize itself by electing one of its members as chairman and other officers as the committee considers necessary. Afterward, the committee at least annually shall meet and at the call of the chairman or a majority of the members. A quorum consists of five members.

(C) Unless the committee finds a person qualified to serve as the Executive Director of the Department of Workforce, the person may not be appointed.

(D) A member of the committee that misses three consecutive scheduled meetings at which a quorum is present must be removed from and replaced on the committee by the person that appointed that member.

(E) The committee must discharge its duties related to screening and nominating qualified individuals for appointment by the Governor in the manner provided in Chapter 20, Title 2.

Section 41-27-720. The committee shall:

(1) nominate three qualified applicants for the Governor to consider in appointing the executive director. In order to be found qualified, the person must meet the minimum requirements as provided in Section 41-29-35. The committee must consider a person's experience and expertise in matters related to unemployment, workforce development, and economic development. A person may not be appointed to serve as the permanent executive director unless he is found qualified by the committee. If the Governor rejects all of the nominees, the committee must reopen the nominating process;

(2) screen Department of Workforce Appellate Panel candidates for qualifications. In order to be found qualified, the person must meet the minimum requirements as provided in Section 41-29-300(E). The committee must consider a person's experience and expertise in matters related to unemployment, workforce development, and economic

development. A person may not be elected to serve on the Department of Workforce Appellate Panel unless he is found qualified by the committee;

(3) conduct an annual performance review of the executive director, which must be submitted to the General Assembly and the Governor. A draft of the executive director's performance review must be submitted to him, and the executive director must be allowed an opportunity to be heard before the committee before the final draft of the performance review is submitted to the General Assembly and the Governor;

(4) submit to the General Assembly and the Governor, on an annual basis, the committee's evaluation of the performance of the Department of Workforce. A proposed draft of the evaluation must be submitted to the Executive Director of the Department of Workforce before submission to the General Assembly and the Governor, and the Executive Director of the Department of Workforce must be given an opportunity to be heard before the committee before the completion of the evaluation and its submission to the General Assembly and the Governor;

(5) assist in developing an annual workshop of at least six contact hours concerning ethics and the Administrative Procedures Act for the executive director and employees of the Department of Workforce as the committee considers appropriate;

(6) make reports and recommendations to the General Assembly and the Governor on matters relating to the powers and duties set forth in this section;

(7) submit a letter to the General Assembly with the annual budget proposals of the Department of Workforce, indicating the committee has reviewed the proposals; and

(8) undertake additional studies or evaluations as the committee considers necessary.

Section 41-27-725. (A) The committee in the discharge of its duties may administer oaths and affirmations, take depositions, and issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda, and other records considered necessary in connection with the committee's investigation.

(B) No person shall be excused from attending and testifying or from producing books, papers, correspondence, memoranda, or other records before the committee on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture. However, no individual shall be prosecuted or subjected to any criminal penalty

based upon testimony or evidence submitted or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that the individual so testifying shall not be exempt from prosecution and punishment for perjury and false swearing committed in so testifying.

(C) In case of contumacy by any person or refusal to obey a subpoena issued to any person, any circuit court of this State or circuit judge thereof within the jurisdiction of which the person guilty of contumacy or refusal to obey is found, resides, or transacts business, upon application by the committee may issue to the person an order requiring him to appear before the committee to produce evidence if so ordered or to give testimony touching the matter under investigation. Any failure to obey an order of the court may be punished as a contempt hereof. Subpoenas shall be issued in the name of the committee and shall be signed by the committee chairman. Subpoenas shall be issued to those persons as the committee may designate.

Section 41-27-730. (A) The committee members are entitled to mileage, subsistence, and per diem as authorized by law for members of boards, committees, and commissions while in the performance of the duties for which they are appointed. These expenses must be paid from the general fund of the State on warrants duly signed by the chairman of the committee and payable by the authorities from which they are appointed, except as provided in subsection (B) of this section.

(B) The committee may request that it be reimbursed for expenses associated with its duties with funds from the employment security administration fund. The expenses of the committee must be advanced by a legislative body and the legislative body incurring this expense must be reimbursed by the State.

Section 41-27-740. (A) The committee must use clerical and professional employees of the Senate Labor, Commerce and Industry Committee and the House of Representatives Labor, Commerce and Industry Committee for its staff, who must be made available to the committee.

(B) The committee may employ or retain other professional staff, upon the determination of the necessity for other staff by the committee.

Section 41-27-750. The committee may conduct a comprehensive study of other states' unemployment and workforce agency structures,

responsibilities, qualifications, and compensation. The committee may prepare and deliver this report along with its recommendations to the General Assembly and the Governor.”

Executive Director Workforce Department; manner of appointment, qualifications required

SECTION 119. Chapter 29, Title 41 of the 1976 Code is amended by adding:

“Section 41-29-35. (A) The Executive Director of the Department of Workforce must be appointed pursuant to the procedure set forth in Section 41-27-720.

(B) The committee must nominate three applicants found qualified to serve as executive director for the Governor’s consideration. In making nominations to the Governor, the committee should consider race, gender, national origin, and other demographic factors to ensure nondiscrimination to the greatest extent possible as to all segments of the population of the State. The committee must also give due consideration to a person’s ability, area of expertise, dedication, compassion, common sense, and integrity. If fewer than three applicants are found qualified to serve as executive director, the committee must resolicit for applicants and continue the screening process until three applicants are found qualified and nominated.

(1) A person may not be appointed to serve as permanent executive director unless the committee finds the person qualified.

(2) The Governor must transmit the name of his appointee to the Senate for advice and consent.

(3) If the Governor rejects all of the nominees, the committee must reopen the nominating process.

(C) For the committee to find a person qualified, he must have:

(1) a baccalaureate or more advanced degree from:

(a) a recognized institution of higher learning requiring face to face contact between its students and instructors prior to completion of the academic program;

(b) an institution of higher learning that has been accredited by a regional or national accrediting body; or

(c) an institution of higher learning chartered before 1962; and

(2) a background of substantial duration and expertise in business, labor and employment, employment benefits, human resource management, or five years’ experience as a practicing attorney.

(D) The committee may find a person qualified although he does not have a background of substantial duration and expertise in one of the

five enumerated areas contained in subsection (C)(2) of this section if two-thirds of the committee vote to qualify this candidate and provide written justification of their decision in the report as to the qualifications of the candidates.”

Executive Director of Workforce Department obliged to discharge duties in certain manner

SECTION 120. Chapter 29, Title 41 of the 1976 Code is amended by adding:

“Section 41-29-25. (A) The executive director shall discharge his duties:

- (1) in good faith;
- (2) with the care an ordinarily prudent person in a like position would exercise under similar circumstances; and
- (3) in a manner he reasonably believes to be in the best interests of the department. As used in this chapter, best interests means a balancing of the following:
 - (a) achieving the purposes of the department;
 - (b) preservation of the financial integrity of the department and its ongoing operations; and
 - (c) exercise of the powers of the department in accordance with good business practices and the requirements of applicable laws and regulations.

(B) In discharging his duties, the executive director is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:

- (1) one or more officers or employees of the State whom the executive director reasonably believes to be reliable and competent in the matters presented; or
- (2) legal counsel, public accountants, or other persons as to matters the executive director reasonably believes are within the person’s professional or expert competence.

(C) The executive director is not acting in good faith if he has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection (B) unwarranted.

(D) Nothing in this section gives rise to a cause of action against the executive director or any decision made by the executive director concerning departmental operations or development.”

Governor must appoint qualified interim executive director with advice and consent of the Senate; length of tenure defined

SECTION 121. The Governor must appoint a person meeting the requirements for executive director provided in this act to serve as interim executive director. The interim executive director serves until March 31, 2011, or until a successor is appointed pursuant to this act. The interim executive director is appointed upon the advice and consent of the Senate.

Code Commissioner shall make certain conforming changes

SECTION 122. The Code Commissioner is directed to change all references in the 1976 Code to the "Employment Security Commission" to the "Department of Employment and Workforce" and all references to the "Chairman of the Employment Security Commission" or "chairman" that refer to the Chairman of the Employment Security Commission to "Executive Director of the Department of Employment and Workforce" or "executive director", as appropriate.

Repeal

SECTION 123. Sections 41-29-30, 41-29-60, 41-29-90, 41-29-100, 41-29-130, and 41-29-260 are repealed.

Severability

SECTION 124. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this act, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

Time effective

SECTION 125. (A) This act takes effect upon approval by the Governor.

(B) The provisions of this act requiring the name of the Employment Security Commission to be changed do not take effect until funding becomes available through appropriations by the General Assembly or until sufficient federal funds are available.

(C) Where the provisions of this act transfers the duties and responsibilities of the South Carolina Employment Security Commission (transferring agency) to the Department of Workforce (receiving agency), the employees, authorized appropriations, and real and personal property of the transferring agency are also transferred to and become part of the receiving agency. All classified or unclassified personnel of the transferring agency shall become employees of the receiving agency, with the same compensation, classification, and grade level, as applicable. Where necessary and appropriate, the State Budget and Control Board shall cause all necessary actions to be taken to accomplish this transfer and shall in consultation with the agency head of the transferring and receiving agencies prescribe the manner in which the transfer provided for in this section shall be accomplished. The board's action in facilitating the provisions of this section are ministerial in nature and shall not be construed as an approval process over any of the transfers.

(D) Employees or personnel of the transferring agency transferred to or made a part of the receiving agency shall continue to occupy the same office locations and facilities which they now occupy unless or until otherwise changed by appropriate action and authorization. The rent and physical plant operating costs of these offices and facilities, if any, shall continue to be paid by the transferring agency until otherwise provided by the General Assembly. The records and files of the transferring agency shall remain the property of the transferring agency, except that the transferred personnel shall have complete access to these records and files in the performance of their duties as new employees of the receiving agency.

(E) All remaining costs necessary for the implementation and operation of the Department of Workforce shall be provided for by the General Assembly in the annual appropriations act however, for fiscal year 2009-2010, the funds appropriated to the South Carolina Employment Security Commission shall be credited to the Department of Workforce for the implementation of this act and for the operation needs of the department.

Ratified the 25th day of March, 2010.

Approved the 30th day of March, 2010.
